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during his civil procedure course had to be virtual because of Covid. He is mature, broad gauged in his outlook, fields of interest, and is very much interested in the world around him.

On the basis of my experience with him, Ben should fit in well in the collegial environment of a judge's chambers. He worked effectively with the other researchers the summer he spent with me and that should be true with regard to working with you and your other clerks and staff. I believe he can perform whatever tasks you ask of him.

If I can be of any further assistance to you with regard to Ben, please do not hesitate to communicate with me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur R. Miller". The signature is fluid and cursive, with the first name "Arthur" being the most prominent.

Arthur R. Miller

June 06, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Benjamin Donovan for a clerkship in your chambers. I first came to know Ben as a student in my 1L Torts class during the Spring 2022 semester (in which he earned an A-). Ben was also a student this past semester in my Business Torts seminar, in which he has earned a B+.

Ben was a valuable participant in my Torts class. He showed great interest and deep thinking about the role of tort law in advancing civil rights. He was engaged in our class discussions about tort law in the context of workplace and sexual harassment, and its use in the context of other civil rights disputes, such as in *Sines v. Kessler*, which arose from the 2017 Unite the Right event in Charlottesville.

Ben was also an engaged member of my Business Torts class. He showed great interest in the areas of defamation and disinformation, including in the Alex Jones trials, and his final paper offered an interesting perspective on the expansion of defamation protections to new media. He has also demonstrated great interest in AI algorithms and federal preemption of tort law.

On a personal level, Ben is a thoughtful, personable, and mature young man who exhibits a genuine interest in the material. I believe he would be a valuable asset to your chambers. I hope you will seriously consider him as a candidate.

Sincerely,

Catherine M. Sharkey  
Segal Family Professor of  
Regulatory Law and Policy

Catherine Sharkey - [catherine.sharkey@nyu.edu](mailto:catherine.sharkey@nyu.edu) - 212-998-6729

June 05, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Ben Donovan for a clerkship.

I have had the pleasure of working with Ben in two courses. In his first semester of law school, he was in my 1L Criminal Law course. In the Spring semester of his second year, he was in my Criminal Procedure course.

In the 1L Criminal Law course, Ben stood out in a very large class (95 students) because he often made highly thoughtful comments in class. He received an A- in the course, based entirely on the exam. His exam score was only two points short of receiving an A.

In the Criminal Procedure course, he easily earned an A based on his outstanding work on the two papers for the course. In one paper, the students write a memorandum of points and authorities in support of a defense motion to limit the prosecution's use of the defendant's prior convictions to cross-examine the defendant at trial if he chooses to take the witness stand. The other paper takes the form of an internal memo from a capital defender office staff attorney to a supervising attorney about a number of substantive legal issues: the validity of the capital jury sentencing instructions in the case; a potential Brady claim; a potential claim of ineffective assistance of counsel; the availability of state postconviction review under the applicable state statutes despite the failures of trial and appellate counsel to preserve the claims; and the availability of federal habeas corpus review if the state postconviction courts rely on procedural bars to decline to reach the merits of the substantive legal claims.

In the papers, Ben demonstrated that he is an excellent researcher (he found all of the relevant authorities), a first-rate writer (his papers were extremely well-structured and he presented all of her arguments clearly and persuasively), and has terrific judgment (he made excellent choices about which of the potentially available arguments to make and which to forego, and he framed the arguments in the most persuasive way). I was impressed by the high quality of his work.

I believe that the characteristics I have observed in Ben – his intelligence; first-rate skills of researching and writing; thoughtfulness; and good judgment – would enable him to do an excellent job as a law clerk.

Respectfully,  
Randy Hertz

Randy Hertz - hertz@nyu.edu - 212-998-6434

Benjamin M. Donovan

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

DANIEL DAVIS,

Defendant

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF THE  
DEFENDANT’S IN LIMINE MOTION TO  
EXCLUDE THE PRIOR CONVICTION**

**ARGUMENT<sup>1</sup>**

Defendant Daniel Davis moves to exclude his prior conviction under Fed. R. Evid. 609 if he elects to testify at trial. Under Rule 609(a)(1)(B), the probative value of admitting the prior conviction does not outweigh the prejudicial effect on Mr. Davis. Secondly, under Rule 609(a)(2), Mr. Davis’s prior conviction for willfully injuring Government property, 18 U.S.C. § 1361, did not require proving a dishonest act or false statement.

**I. Under Rule 609(a)(1)(B), the Probative Value of Admitting the Prior Conviction Does Not Outweigh the Prejudicial Effect to Mr. Davis**

Rule 609(a)(1)(B) indicates Mr. Davis’s conviction is inadmissible. Its potential probative value is greatly outweighed by its prejudicial effect because the prior conviction and the currently charged crimes are substantially similar, Mr. Davis has had a clean criminal record in the ensuing years, only Mr. Davis can testify to certain material circumstances, and destroying government property has no bearing on Mr. Davis’s credibility.

<sup>1</sup> I wrote this memorandum for the course Criminal Procedure: Arraignment to Postconviction Simulation, I took in Spring of 2023. I received no outside help in writing. A friend skimmed the writing this past week but only suggested two minor grammatical edits.

**A. The Prior Conviction is Covered by Rule 609(a)(1)(B)**

Rule 609 provides that a defense witness's credibility can be attacked by evidence of a criminal conviction, and the evidence "must be admitted," where the relevant crime was "punishable by death or imprisonment for more than one year," and "if the probative value of the evidence outweighs its prejudicial effect to that defendant." Fed. R. Evid. 609(a)(1)(B).

In 2016, Mr. Davis was convicted upon his admission of guilt for willfully injuring Government property by breaking the doors of postal boxes under 18 U.S.C. § 1361, causing damage in excess of \$1,000. For damages greater than \$1,000, the statute permits imprisonment "for not more than ten years," in addition to potential fines. 18 U.S.C. § 1361. This conviction is covered by the Rule's plain meaning.

**B. The *Bedford* Factors Analysis Indicates that Admitting the Prior Conviction Would Be Unduly Prejudicial to Mr. Davis**

When considering the probative value of a potential statement versus its potential prejudicial effect, Third Circuit courts balance four factors: "(1) the kind of crime involved; (2) when the conviction occurred; (3) the importance of the witness' testimony to the case; (4) the importance of the credibility of the defendant." *Gov't of V.I. v. Bedford*, 671 F.2d 758, 761 n.4 (3d Cir. 1982). District courts have "discretion to determine when to inquire into the facts and circumstances underlying a prior conviction and how extensive an inquiry to conduct." *U.S. v. Lipscomb*, 702 F.2d 1049, 1068 (D.C. Cir. 1983) (often favorably referenced in Third Circuit).

**1. The Kind of Crime is Substantially Similar and Not Impeachable**

In evaluating the underlying crime in the prior conviction, "courts consider the impeachment value of the prior conviction as well as its similarity to the charged crime." *U.S. v. Caldwell*, 760 F.3d 267, 286 (3d Cir. 2014) (citing 5 Jack B. Weinstein & Margaret A. Berger,

*Weinstein's Federal Evidence* § 609.06 [3][b] (2d ed.2011)). “Impeachment value” refers to how relevant the prior conviction is to the witness’s truthfulness. *Id.* “Prior convictions which are for the same or substantially the same conduct as the charged crime should be admitted sparingly because of their prejudicial effect.” *U.S. v. Wilson*, 2016 WL 2996900, \*2 (D.N.J. May 23, 2016) (citing *Gordon v. U.S.*, 383 F.2d 936, 940 (D.C. Cir. 1967)). A prior conviction need only “bear[] resemblance” to an alleged crime to be inadmissible. *U.S. v. Wise*, 581 F. Supp. 3d 656, 659 (D.N.J. 2022) (in a 609(b) ruling, prior sexual battery conviction overly resembled child sexual abuse material allegations).

Admitting prior convictions for such similar conduct, may cause a jury to “unfairly assume the defendant is prone to commit the particular offense and so must be guilty of the current charges.” *Id.* (citing *Caldwell*, 760 F.3d at 286-87); *see also Old Chief v. U.S.*, 519 U.S. 172, 180 (1997) (prior convictions could cause a jury to “generaliz[e] a defendant's earlier bad act into bad character and tak[e] that as raising the odds that he did the later bad act now charged.”); *U.S. v. Sanders*, 964 F.2d 295, 297-98 (4th Cir. 1992) (“The jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged.”).

The probative value of Mr. Davis’s prior conviction does not outweigh its prejudicial effect. His prior conviction is willful injury of Government property under 18 U.S.C. § 1361 and he is now charged with two counts each of committing forgery 18 U.S.C. § 495 and mail theft under 18 U.S.C. § 1708. The prior conviction is too similar to mail theft to be admitted into evidence. While willful injury of Government property may not be identical to mail theft, they are quite similar and do “bear[] resemblance” to one another. *Wise*, 581 F. Supp. 3d at 659.

First, a juror may associate injury to government property with the destruction of the mailbox at 1207 MacArthur Boulevard, a key fact upon which the entire case is built. The statute covers theft of mail from any “letter box” or “mail receptacle,” 18 U.S.C. § 1708, and allegedly, such theft here was accomplished via “ripp[ing] open” Vivian Vincent’s mailbox. (App. B. at 2.) A letterbox pried open in such a manner is intimately linked to Mr. Davis’s prior injury of the government mailbox. Even if the court can do no more than ask whether he was convicted, *U.S. v. Sallins*, 1993 WL 427358 (E.D.P.A. Oct. 18, 1993), his destruction in the past becomes material to the present destroyed mailbox. With the first link, the chain is forged.<sup>2</sup> Proving every charge is contingent on showing his initial breach of the mailbox. Mr. Davis could not have stolen the mail or possessed it, nor forged the signature on the check or cashed it without first damaging the mailbox. Admitting the prior conviction would heighten the risk of impermissible inference of Mr. Davis’s guilt. *See U.S. v. Miller*, 2004 WL 2612420, at \*5 (E.D.P.A. Nov. 16, 2004). And the danger of “unfair prejudice, even with a limiting instruction ... outweighs the probative value of the evidence.” *United States v. Cherry*, 2010 WL 3156529, at \*6 (E.D.P.A. Aug. 10, 2010).

Regarding the potential impeachment value, the circumstances of the conviction matter. Mr. Davis was sentenced to 15 months’ probation, rather than anything approaching the ten years’ imprisonment permitted by the law, suggesting this offense was altogether relatively inoffensive and insignificantly impeachable. *See U.S. v. Bernard*, 2021 WL 3077556 (E.D.P.A. Jul. 21, 2021) (relatively low sentences weigh against the impeachment value of evidence). Davis’s decision to plead guilty rather than go to trial may further reduce the impeachment value of the conviction, because a defendant’s admission of guilt in a plea deal suggests they are

<sup>2</sup> *Star Trek: The Next Generation* (April 29, 1991) (albeit taken somewhat out of context).

honest. *See Lipscomb*, 702 F.2d at 1066 (discussing then-Senator Biden’s belief that pleading guilty speaks well to a defendant’s credibility). While “felony conviction[s] ha[ve] some inherent impeachment value,” the connection between the destruction of Government property and Mr. Davis’s “likelihood of testifying truthfully is attenuated.” *Bernard*, at \*2.

## **2. The Age of the Conviction Reduces the Probative Value of the Admission**

Convictions more than ten years old must satisfy the requirements of 609(b) for admission. “But even where the conviction is not subject to the ten-year restriction, ‘the passage of a shorter period can still reduce [a prior conviction’s] probative value.’” *Caldwell*, 760 F.3d at 287 (citing 28 Charles Alan Wright & Victor James Gold, *Federal Practice and Procedure* § 6134, at 258 (2d ed.2012)). “A conviction’s age weighs particularly in favor of exclusion ‘where other circumstances combine with the passage of time to suggest a changed character.’” *Id.* In practice, courts have found that “the probative value of a conviction decreases as its age increases.” *United States v. Cherry*, 2010 WL 3156529, at \*7 (E.D.P.A. Aug. 10, 2010).

Six and a half years ago, on December 31, 2016, twenty-two-year-old Daniel Davis plead guilty to violating 18 U.S.C. 1361. He was sentenced to 15 months of probation, which he completed without issue. This was his only brush with the law, and he now works full-time as a forklift operator at a radiator plant. Mr. Davis’s spotless record over the past six and a half years, in addition to his full-time employment, “suggest[s] a changed character.” *Caldwell*, 760 F.3d at 287 (citation omitted). For that reason, the age of his prior conviction weighs against its admission.

## **3. Mr. Davis’s Own Testimony is Required at Trial**

A defendant’s “tactical need ... to testify on his own behalf may militate against the use of impeaching convictions.” *Caldwell*, F.3d at 287 (citations omitted). If the accused must testify



to refute strong prosecution evidence, “the court should consider whether, by permitting conviction impeachment, the court in effect prevents the accused from testifying.” *Id.* But if “the defense can establish ... the defendant’s testimony by other means,” a defendant’s testimony is less necessary, and a prior conviction is more likely to be admitted. In other words, the prejudicial impacts of admission may be lessened if other defense witnesses can provide the same testimony as the defendant. *See, e.g., United States v. Causey*, 9 F.3d 1341 (7th Cir. 1993).

The third Bedford factor further supports excluding the prior conviction. Several witnesses can attest to Mr. Davis’s presence at the Veterinary Clinic. (App. B. at 7.) They can testify to his presence in the procedure room, the length of the procedures, his signatures, and the probable time he spent in the waiting room. But with respect to actual times, they can only concretely support that he called the clinic at 9:10 A.M. and that his dog was discharged at 10:50 A.M. (App. B. at 7-8.) Beyond that, there exist greater windows of uncertainty and many variables at play. For one, if the mailman arrived at 1207 MacArthur Blvd as early as 9:25 A.M., (App. B. at 4-5.), and everything else, including transit, (App. B. at 8.), and the medical procedure, (App. B. at 7-8.), had gone as quickly as possible, that would leave approximately ten to fifteen minutes when something could have happened to the mailbox before Vivian Vincent came down to check her mail at approximately 10 A.M. (App. B. at 3.) Alternatively, Mr. Davis may have even left the building immediately after his phone call, hit heavy traffic, sat through a longer procedure, and still have been discharged at 10:50 A.M. There are too many uncertainties to rely wholly on other defense witnesses for this period. Only Mr. Davis can testify about this timeline. Further, only Mr. Davis can testify with respect to never having been to the liquor store in Bensalem. Just a single witness, Boris Smirnoff, testified to having identified Mr. Davis as the man he believed cashed the check at a police line-up. (App. B. at 5.) Challenging enough as it is

to prove a negative—that he had never been to the store—only Mr. Davis can testify on this matter.

#### **4. Mr. Davis’s Credibility is Not Sufficiently Significant to the Case**

The fourth factor concerns the significance of the defendant’s credibility to the case. “When the defendant’s credibility is a central issue, this weighs in favor of admitting a prior conviction.” *Caldwell*, 760 F.3d at 288 (citation omitted). In a case “reduced to a swearing contest between witnesses, the probative value of a conviction is increased.” *Id.* When a defendant testifies, he places his own credibility at issue. *See United States v. Beros*, 833 F.2d 455, 463-64 (3d Cir. 1987).

This factor may lean slightly towards admission of the prior conviction, but not enough to overcome the first three factors which favor exclusion. Especially with respect to the forgery charges and Mr. Davis’s presence at the liquor store, this case may settle into a “he said, they said” battle between Mr. Davis, Mr. Smirnoff, and the prosecuting attorneys. *Caldwell*, 760 F.3d at 288. Yet, it should further be noted that, given Mr. Davis’s story is corroborated by the Veterinary Clinic and its employees, there is evidence that Mr. Davis is credible. That is, going on the stand to testify, having already been supported in asserting he was not present when the mailbox was broken into—having been made credible there—lends credence to the idea that Mr. Davis is credible with respect to the forgery charges and the check cashing at the liquor store, too.

Taken together, the *Bedford* factors tilt the Rule 609(a)(1)(B) scales too far in the direction of prejudice to admit Mr. Davis’s prior conviction. The conviction simply does not “tangibl[y] contribut[e] to the evaluation of credibility” necessary to outweigh prejudice.

*Caldwell*, 760 F.3d at 286. The crime is too similar, the conviction too old, the testimony too important, and the credibility insufficiently material.

## **II. Under Rule 609(a)(2), the Prior Conviction Did Not Require Proving a Dishonest Act or False Statement**

Rule 609(a)(2) further indicates that Mr. Davis's prior conviction is inadmissible, because 18 U.S.C. § 1361 does not require proving any dishonest act or false statement.

### **A. 18 U.S.C. § 1361 Does Not Explicitly Contain a Dishonest Act or False Statement nor is it Similar to a *Crimen Falsi***

"The proper test for admissibility under Rule 609(a)(2) does not measure the severity or reprehensibility of the crime, but rather focuses on the witness's propensity for falsehood, deceit, or deception." *Cree v. Hatcher*, 969 F.2d 34, 38 (3d Cir. 1992). Automatic admission of a prior conviction under Rule 609(a)(2) requires a court to determine that "establishing the elements of the crime required proving ... a dishonest act or false statement." Fed. R. Evid. 609(a)(2). *See also, Cree v. Hatcher*, 969 F.2d 34, 38 (3d Cir. 1992) (before the 2006 amendment, writing that "dishonesty or false statement is an element of the statutory offense."). A crime "must involve expressive dishonesty to be admissible under Rule 609(a)(2)." *Walker v. Horn*, 385 F.3d 321, 334 (3d Cir. 2004). Generally, Rule 609(a)(2) is interpreted narrowly, and meant to exclude potentially dishonest crimes such as theft that do not "bear on the witness's propensity to testify truthfully." *United States v. Johnson*, 388 F.3d 96, 100 (3d Cir. 2004) (citing to the Conference Committee).

The elements of 18 U.S.C. § 1361 are "(1) willfully injuring; (2) Government property." Neither willful injury, nor the requirement that the injured property belongs to the Government, require proving "a dishonest act or false statement." Fed. R. Evid. 609(a)(2). Therefore, Mr.

Davis's willful injury of Government property should not be covered by the statute. That Mr. Davis did so to steal mail from within the mailbox is immaterial. He was charged with theft in the indictment, although that count was ultimately dismissed in the plea deal—but an indictment is not a conviction under Rule 609. *See U.S. v. McBride*, 862 F.2d 1316, 1320 (8th Cir. 1988). On the conviction alone, Mr. Davis only willfully injured Government property, circumstances aside, which has “little or no direct bearing on [his] honesty and veracity.” *U.S. v. Estrada*, 430 F.3d 606, 617-18 (2d Cir. 2005).

Willful injury of Government property in this context is more akin to a crime of violence, which is not covered by 609(a)(2), than a crime of deceit. *But cf. U.S. v. Melaku*, 41 F.4th 386 (4th Cir. 2022) (“willfully injuring or committing depredation against property of United States was not “crime of violence,” and thus could not serve as predicate to charge for using, carrying, and discharging firearm during crime of violence.). 18 U.S.C. § 1361 shares commonalities with a bevy of other non-deceitful crimes. *See, e.g., U.S. v. Meserve*, 271 F.3d 314 (1st Cir. 2001) (assault and disorderly conduct). While destroying the mailbox with an automobile jack handle may indicate Mr. Davis has “a short temper” or “a combative nature,” and his actions were certainly wrong, they have no bearing on his honesty. *Estrada*, 430 F.3d at 617-18.

### **CONCLUSION**

Mr. Davis's prior conviction should be excluded under Fed. R. Evid. 609 if he elects to testify at trial. As shown above, under Rule 609(a)(1)(B), the probative value of admitting the prior conviction does not outweigh the prejudicial effect to Mr. Davis. The prior conviction is too similar to one of the alleged crimes, the conviction is too old to meaningfully impugn his credibility, his testimony is required to speak for various ambiguous unaccounted-for windows of time, and his credibility is not sufficiently at issue such that it is material to the case.

Secondly, under Rule 609(a)(2), Mr. Davis's prior conviction did not require proving a dishonest act or false statement, so should not be automatically introduced to the evidentiary record.

## Applicant Details

First Name	Devin
Last Name	Doolan
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:rnj7dm@virginia.edu">rnj7dm@virginia.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>229 Harvest Drive</div> <div>City</div> <div>Charlottesville</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>22903</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	301-351-6031

## Applicant Education

BA/BS From	University of Maryland-College Park
Date of BA/BS	May 2021
JD/LLB From	University of Virginia School of Law
	<a href="http://www.law.virginia.edu">http://www.law.virginia.edu</a>
Date of JD/LLB	May 19, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	The Journal of Law and Politics
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships No

Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Coughlin, Anne  
acoughlin@law.virginia.edu  
434-243-0392

Frampton, Thomas  
tframpton@law.virginia.edu  
(434) 924-4663

Bayefsky, Rachel  
rbayefsky@law.virginia.edu  
(434) 924-5716

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Devin J. Doolan, III**

229 Harvest Dr., Charlottesville, VA 22903 | 301.351.6031 | rnj7dm@virginia.edu

June 10, 2023

The Honorable Jamar K. Walker  
U.S. District Court, E.D.V.A.  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

I hope this letter finds you in good health and high spirits. My name is Devin Doolan, and I am a rising third-year student at the University of Virginia School of Law. I am writing to apply for a clerkship in your chambers following my graduation in May 2024. As a Maryland native who intends to build a practice in the area, I consider a clerkship under your guidance to be the opportunity of a lifetime.

I am enclosing my resume, my law school transcript, and a writing sample. You will also be receiving letters of recommendation from Professors Anne Coughlin, Thomas Frampton, and Rachel Bayefsky. All three professors have said that they would be happy to speak with you directly. If you would like to reach them, Professor Coughlin's telephone number is (434) 243-0392, Professor Frampton's telephone number is (434) 924-4663, and Professor Bayefsky's telephone number is (434) 924-5716.

Please reach out to me at the phone number or email above if I can offer further information. I appreciate your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Devin Doolan', with a stylized flourish at the end.

Devin J. Doolan, III



## Devin J. Doolan, III

229 Harvest Dr., Charlottesville, VA 22903 | 301.351.6031 | rnj7dm@virginia.edu

### EDUCATION

**University of Virginia School of Law**, Charlottesville, VA

*J.D.*, Expected May 2024

- GPA: 3.74
- Journal of Law and Politics, Submissions Review Board
- Class of 2024 Community Fellow

**University of Maryland**, College Park, MD

*B.A.* in Communications, GPA: 3.925, May 2021

### EXPERIENCE

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**, Washington, DC

*Summer Associate*, May 2023 – present

- Drafted legal memorandum on Fourth Circuit monopolization case law
- Drafted legal memoranda on the scope and effect of the Iran Sanctions on a U.S. subsidiary

**U.S. Department of Justice, Civil Division**, National Courts Section, Washington, DC

*Legal Intern*, September 2022 – December 2022

- Drafted legal memoranda on issues of statutory construction
- Supported trial team in developing the factual record for a class action defense
- Drafted informal appellate brief responding to allegations made by *pro se* litigant

**Forthright Legal**, Charlottesville, VA

*Pro Bono Legal Intern*, July 2022 – August 2022

- Drafted legal brief to the Board of Immigration Appeals in support of our client's I-589 Application for Asylum and Withholding of Removal

**Abrams and Bayliss LLP**, Wilmington, DE

*Summer Associate*, May 2022 – July 2022

- Drafted language for an expedited post-trial brief on the voting authority and fiduciary duties of conflicted corporate directors, the validity and scope of non-unanimous board action, and contested shareholder elections
- Drafted language for multiple 12(b)(6) motions in response to various allegations
- Drafted legal memoranda on the transfer of attorney-client privilege in a merger, the required scope of production for a discovery request made by a former client, the ownership structure of a corporation as disclosed by official SEC filings, and the rights associated with different classes of stock for a particular company
- Cross-referenced a draft pre-trial order from opposing counsel with 67 requests for admission and delivered a written and oral report detailing the status of each request for admission and my recommended response to a protective order filed by opposing counsel

**Coalition for Smarter Growth**, Washington, DC

*Pro Bono Legal Intern*, January 2022 – February 2022

- Drafted a legal brief to the Prince George's County, Maryland, County Council advocating for a protective amendment to their tenant protection statute

**International TEFL Academy**, Washington, DC

*Teacher - English as a Second Language*, August 2019 – January 2020

- Taught business English to adults and beginner English to teens while volunteering at the International Center of Language Studies

### INTERESTS

Long-distance hiking; playing and watching basketball, baseball, and golf; historical biographies

UNIVERSITY OF VIRGINIA  
SCHOOL OF LAW

Name: Devin Doolan III

Date: June 08, 2023

Record ID: rnj7dm

**This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.**

**Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.**

**FALL 2021**

LAW	6000	Civil Procedure	4	A	Rutherglen, George
LAW	6002	Contracts	4	A-	Kordana, Kevin A
LAW	6003	Criminal Law	3	A	Coughlin, Anne M
LAW	6004	Legal Research and Writing I	1	S	Ware, Sarah Stewart
LAW	6007	Torts	4	A-	Cope, Kevin

**SPRING 2022**

LAW	6001	Constitutional Law	4	A-	Schauer, Frederick
LAW	6112	Environmental Law	3	A-	Livermore, Michael A.
LAW	7043	Insurance	3	A-	Abraham, Kenneth S
LAW	6005	Lgl Research & Writing II (YR)	2	S	Ware, Sarah Stewart
LAW	6006	Property	4	B+	Johnson, Alex M

**FALL 2022**

LAW	8003	Civil Rights Litigation	3	A	Jeffries, John C
LAW	7019	Criminal Investigation	4	A-	Coughlin, Anne M
LAW	7791	Defining Leadership Moments (SC)	1	B+	Bruno, Evan Anthony
LAW	6105	Federal Courts	4	A-	Bayefsky, Rachel

**SPRING 2023**

LAW	7788	Science and the Courts (SC)	1	B	Rakoff, Jed S
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**SPRING 2023**

LAW	7018	Criminal Adjudication	3	A	Frampton, Thomas Ward
LAW	6104	Evidence	4	A-	Mitchell, Paul Gregory
LAW	8811	Independent Research	1	A	Coughlin, Anne M
LAW	7062	Legislation	4	A	Nelson, Caleb E
LAW	7071	Professional Responsibility	3	A-	Cohen, George M

June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

Devin Doolan has advised me that he is applying for a position as law clerk in your Chambers. I am delighted to offer this reference on his behalf. I've known Devin since he matriculated at UVA Law School in August 2021, and, by now, I know him very well. He's taken two classes with me – Criminal Law (fall 2021) and Criminal Investigation (fall 2022) – and he produced a terrific independent research paper under my supervision this past spring term. Devin is a brilliant and hard-working law student, and he is a deeply ethical and very kind man. It's been an honor, as well as a great joy, for me to work with him so early in his career, and I recommend him to you whole-heartedly. He's terrific.

Devin comes from a family of lawyers. Both his father and grandfather were lawyers, as were other family members, including aunts and uncles. Probably, it's fair to say that he long thought that he too would enter the profession, but his path to law school was longer and more complicated than he or others would have predicted. When Devin was in his first year as an undergraduate at the University of Maryland, his family found that it no longer could minimize the harmful effects of his mother's addiction to alcohol and drugs, and, so, they staged an intervention to encourage her to enter rehabilitation. At first, the family was optimistic about her prospects, but, as the months passed, she did not improve, leaving Devin's father on his own to parent Devin's four much younger siblings. The home front was precarious, to say the least, and Devin decided that the right thing for him to do was to drop out of college for a while and return home to help support his sister and brothers. This decision seems to me to be extraordinary and extraordinarily difficult, but Devin speaks of it in a matter of fact way. It was something that he had to do in order to live with himself – and that was that – he did it, even though it could have come at great cost to himself. He wasn't sure that the move would be terribly helpful – he was very young and had no clear idea about how to stand in for his mother – but he was sure that he would never regret trying to do so. During his year and a half hiatus from college, Devin worked for a legal recruiter and taught English as a second language, all the while serving as a caretaker for his siblings and his father. There are many things that are striking about this story, one of which is Devin's refusal to package it in a neat and tidy way, or to offer it as evidence of his successful selflessness. His mother remains addicted and is now deeply estranged from her family. Devin's siblings are doing well at the moment, and Devin is optimistic about their futures. While he cannot be sure what comes next, he does know that he at least tried to make their lives safer and more enjoyable while his mother was at her worst. He also learned the value of discipline and delayed gratification. During the time that he was at home, he never gave up on his aspiration to attend law school – in fact, his stint as a legal recruiter helped to reinforce his commitment – and he never faltered in his belief that, if he worked hard enough, he could end up at a place like UVA Law.

To our great good fortune, Devin did end up at UVA Law, and the results have been magnificent. His work in both of my classes was terrific, and his independent research was meticulous and original. In the classroom, Devin is a solid citizen – a dream student – who comes to the table ready to work, focused on the lecture and dialogue, and prepared to jump in with interventions that push the discussion in productive directions. His classroom remarks are well-timed and constructive; he builds on the comments and insights of others, giving credit where credit is due. His enthusiasm for the material and for the process of learning is palpable, a quality that is shared by my best students and colleagues. When I encounter him in the classroom, I get the sense that he is aware of the gifts he's been given – as well as the hardships he's carried – and he's determined to make the most of them for himself and for the good of our professional community. These qualities convince me that he will be a wonderful, generous colleague, as well as a disciplined and productive one.

Devin's law school transcript testifies to his intellectual talent and his work ethic. After two full years of classes, his grade point average stands at 3.747, which places him in the top 11% of his class. His academic trajectory here has been steady and steadily upward; as you will notice, all of his grades this past semester were in the A range. He is thriving in law school, for he approaches each new course, each new assignment, and each new semester with energy, enthusiasm, and determination. He's taken some of our toughest courses (Legislation and Civil Rights Litigation) with some of our toughest professors (Caleb Nelson and John Jeffries) and he's aced them!

Both of the Judges for whom I clerked had a make or break question, which also was make or break for their staffs: Will we like having this person around Chambers every day? If you also care about the do-I-like-to-see-this-person-every-day factor, I'm pleased to report that, where Devin is concerned, the answer is a resounding "yes." He wears well. I'm always happy to see him. He is mindful of professional boundaries, blessed with a warm sense of humor, and kind. I've noticed too that he has formed close friendships with many of his classmates and that he enjoys talking to them about legal issues and topics, helping them to clarify their thinking as well as his own. He would bring all of these essential qualities to your Chambers, just as he has brought them to us.

Please reach out to me by telephone or email if you have questions or concerns about Devin's application. I would love to talk to you in person about him and to thank you for considering his candidacy.

Very truly yours,

Anne Coughlin - [acoughlin@law.virginia.edu](mailto:acoughlin@law.virginia.edu) - 434-243-0392

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June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write on behalf of Devin Doolan, who is applying to serve as your law clerk upon graduation. I know Devin well—he just completed a semester in my Criminal Adjudication class—and I believe he would make a very strong clerk.

Devin's performance in my class was excellent. His performance on the (blind graded) final exam was one of the very best out of 60 students, earning a grade of "A." The overall organization of his writing was top-notch, and he scored as well as any of his classmates on the short answer portion of the test. I was particularly impressed with his deft touch communicating uncertainty: he showed unusual aptitude in communicating where the answer was clear, and where (due to some contrary authority) it was appropriate to hedge. While the class was mostly lecture based, I also met with students in small "seminar sessions" throughout the semester to discuss recent criminal procedure scholarship. Devin signed up for sessions dealing with due process protections for federal supervised release revocation and a proposal to create a specialized bar for prosecutors. His responses were nuanced and thoughtful: he returned to first principles, questioned the authors' basic assumptions, and offered useful critiques of the articles.

Outside of class, Devin is friendly and always impeccably professional. On the one or two occasions he had to miss class, he wrote (apologetically) in advance; in office hours, he was polite and to-the-point. Professionally, his interests are broad: he's told me he hopes to remain a "generalist" as long as possible. And though he plans to work for a firm after clerking, he seems to take his pro bono obligations very seriously. Throughout law school he has tackled several pro bono projects related to tenants' rights and immigration, and I know he has found the work meaningful and fulfilling.

If there is any additional information I can provide, please do not hesitate to write ([tframpton@law.virginia.edu](mailto:tframpton@law.virginia.edu)) or call (202.352.8341).

Sincerely,

Thomas Frampton  
Associate Professor of Law  
University of Virginia School of Law  
c: 202.352.8341

Thomas Frampton - [tframpton@law.virginia.edu](mailto:tframpton@law.virginia.edu) - (434) 924-4663

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am very pleased to recommend Devin Doolan for a clerkship in your chambers. Devin was my student in Federal Courts in Fall 2022. In my view, he will make a terrific law clerk.

Devin came to UVA Law after encountering significant personal challenges. He grew up helping to take care of four younger siblings, and his mother struggled with addiction. He took time off from college to return home and create a more comfortable home environment for his siblings. Meanwhile, he worked full-time. These experiences taught him the value of perseverance and being willing to put his plans on hold temporarily as he took care of his family.

His hard work and determination paid off, as Devin is now in the top ten percent of his UVA Law class. In my Federal Courts class, Devin was a highly motivated, bright, and insightful student. His responses to cold calls were accurate and concise, revealing substantial preparation for class and mental clarity. His exam was carefully and thoughtfully written. It was readily apparent from reading his exam that Devin had studied hard and considered federal courts doctrines deeply. He showed his ability to reason well about complex doctrines while simultaneously thinking about the broader picture.

Devin came to my office hours several times to discuss topics in Federal Courts. I was impressed by his dedication to learning the material. We discussed, for example, state sovereign immunity, Supreme Court review of state-court decisions, and supplemental jurisdiction. Devin routinely offered interesting and thought-provoking interpretations of the material. For example, Devin was interested in how to apply the “independent and adequate state ground” standard for Supreme Court review of state-court decisions. He also raised questions about how certain theories regarding jurisdiction-stripping would apply to admiralty cases. Meetings with Devin always left me with more to think about. He certainly knows how to focus on practical matters. At the same time, he has a wide-ranging mind that makes him a wonderful interlocutor.

Devin has excelled outside the classroom as well. He took on a leadership position in his class at the law school—as a Class of 2024 Community Fellow—in order to contribute to the law school community. He is involved in the Pro Bono program and has gained valuable experience providing direct legal services through the program. Additionally, Devin is on the Submissions Review Board for the Journal of Law and Politics. In that capacity, he evaluates submissions to the journal and works with peers in a collaborative process.

During his summers in law school, Devin has pursued multiple opportunities to become involved in practical legal work. As a summer associate at Abrams & Bayliss LLP in Wilmington, Delaware, Devin dug into the nitty-gritty work of litigation. For example, he participated in discovery projects and drafted memoranda on corporate law and attorney-client privilege. At one point, he was asked to conduct a mock direct examination with an expert witness for an upcoming trial when the examining attorney was taken away on an urgent manner. After the examination, the witness spoke highly of Devin to the examining attorney. Devin is the kind of person who seizes opportunities available to him and responds flexibly to unexpected scenarios—qualities that will serve him well in the clerkship role. Devin also worked at Forthright Legal in Charlottesville as a pro bono legal intern. His projects included a memorandum regarding landlord-tenant law in Maryland and a brief on behalf of an immigrant that succeeded in persuading the court to suspend deportation. Moreover, Devin worked as a legal intern at the U.S. Department of Justice’s Civil Division in the Fall of 2022.

In all of these legal roles, Devin was asked to learn quickly about a new area of the law. Devin has noted that he greatly enjoys the process of getting up to speed on a legal doctrine. I believe his eagerness to dive into previously unfamiliar subjects will be a great boon as a law clerk. From a personal perspective, Devin is friendly, respectful, open-minded, and interesting. He takes care to listen to other points of view. He would be a welcome addition to the close-knit Chambers environment, and an intellectually curious person with whom to make conversation.

This summer, Devin has secured a prestigious job as a summer associate at Paul, Weiss. In future, he hopes to gain experience in the courtroom and potentially to move into roles related to government policy. He is also considering academia in the long term. I am confident that Devin will make an impressive contribution to the legal profession.

In sum, I recommend Devin highly for a clerkship in your chambers. Please do not hesitate to contact me if you would like any additional information.

Sincerely,

Rachel Bayefsky

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**Devin J. Doolan, III**

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**Writing Sample**

As a summer associate at Abrams & Bayliss LLP, I drafted the attached memorandum for the trial team I was working with. In it, I examined how the Delaware Court of Chancery would interpret the cost-shifting provision contained in our client's Merger Agreement.

To preserve client confidentiality, I have changed the names of the parties to "Plaintiff" and "Defendant," changed the name of the cost-shifting provision in the Merger Agreement to "Section 10.10," and refer to all cited exhibits as JX-0000. This memorandum has not been edited by others and, other than the edits for confidentiality mentioned above, has received only light edits from myself in an effort to give an accurate sample of my work under a deadline. My employer has given me permission to use this memorandum, in its current form, as a writing sample.



**To: Partner A**  
**From: Devin Doolan**  
**Re: Interpretation of Section 10.10 of the Merger Agreement**

**Introduction**

This memorandum analyzes whether the Court of Chancery will award our client, Plaintiff, all of its costs from the Defendant litigation if Plaintiff succeeds on its claim for breach of contract but loses on its claim of fraud at trial. The parties are bound by the contractual cost-shifting provision found in Section 10.10 of the Merger Agreement, which reads as follows:

“If a claim or dispute brought in accordance herewith is resolved in the favor of a Party hereto, such Party shall be entitled to, and awarded, its costs and expenses incurred in connection with the resolution of such claim or dispute (including reasonable attorneys' fees).”

JX-0000.

Because we are confident in our breach of contract claim but less certain on our claim of fraud, we should prepare to argue that Section 10.10 of the Merger Agreement is an “all-or-nothing” provision that directs the Court to award one party – the prevailing party – all of its costs relating to the litigation. Under this approach, Plaintiff should still recover the entirety of its costs in the event they are successful on breach but fail on fraud. The Defendants will argue that Section 10.10 is a “claim-by-claim” provision that authorizes the Court to award a party its costs stemming from successful claims or defenses, regardless of that party’s overall success in the litigation. If Plaintiff’s claim of fraud is defeated, then, under this pro rata approach, Plaintiff will be liable for the costs incurred by the Defendants in mounting their defense.

The following three-part discussion will begin with a more detailed analysis of the two types of cost-shifting provisions mentioned above. It will then go on to explain why Section 10.10

of the Merger Agreement is likely to be interpreted as an “all-or-nothing” provision. Finally, the third part of the discussion below will show that if the “all-or-nothing” approach does indeed apply, the Court will likely find Plaintiff to be the prevailing party if they win on their claim for breach of contract but lose on their claim of fraud.

# **I. THE “ALL-OR-NOTHING” APPROACH IS THE DEFAULT APPROACH TO INTERPRETING FEE-SHIFTING PROVISIONS IN DELAWARE**

The Court of Chancery will interpret a contractual cost-shifting provision in one of two ways. Under the Court’s preferred “all-or-nothing” interpretation, one party – the party deemed to be the general victor in the litigation – will be awarded the entirety of its costs from the litigation. Alternatively, the Court may interpret a provision to be a “claim-by-claim” provision, under which a party will be awarded its costs incurred for every successful claim or defense it raises.

## **a. The Court’s application of “all-or-nothing” and “claim-by-claim” cost-shifting provisions**

In order to award costs under an all-or-nothing provision, the Court must identify the party that “predominated” or “prevailed” in the litigation. *World-Win Mktg., Inc. v. Ganley Mgmt. Co.*, 2009 WL 2534874, at \*2-3 (Del. Ch. Aug. 18, 2009). To achieve predominance, a litigant “should prevail on the case’s ‘chief issue.’” *Caiola Fam. Tr. v. PWA, LLC*, 2015 WL 6007596, at \*33 (Del. Ch. Oct. 14, 2015) (quoting *W. Willow–Bay Court, LLC v. Robino–Bay Court Plaza, LLC*, 2009 WL 458779, at \*9 (Del. Ch. Feb. 23, 2009)). To determine the “chief issue,” the Court will “evaluate[] the substance of a litigation,” which means that “in the usual case, whether a party prevailed is determined by reference to substantive issues, not damages.” *World-Win Mktg.*, 2009 WL at \*2 (citing *Ivize of Milwaukee, LLC v. Complex Litig. Support, LLC*, 2009 WL 1111179, at \*14 (Del. Ch. Apr. 27, 2009)). For instance, in an action for breach of contract, the chief issue will be the interpretation of the contract, while the remedy – specific performance or damages –

will be a subsidiary issue for the purposes of the all-or-nothing analysis. *See Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, at \*2 (Del. Ch. Apr. 27, 2004) (party seeking specific performance still predominated despite the Court ruling in favor of damages). If “there [is] more than one chief or core issue in a case,” the Court has the discretion to determine “that no party may be regarded as having prevailed” and, accordingly, refuse to award costs altogether. *Mrs. Fields Brand, Inc. v. Interbake Foods LLC*, 2018 WL 300454, at \*3 (Del. Ch. Jan. 5, 2018) (under an all-or-nothing provision, neither party predominated where “each side both won and lost on one of the two equally core issues”); *see also Vianix Delaware LLC v. Nuance Commc'ns, Inc.*, 2010 WL 3221898, at \*28 (Del. Ch. Aug. 13, 2010) (“In these circumstances, with each party winning on a number of disputed issues, there is no clear-cut prevailing party and, therefore, no basis . . . for shifting fees entirely onto the other party.”).

To award costs under a claim-by-claim provision, the Court must “look[] at the results of each claim, assess[] each party's success or failure thereon, and then . . . ascribe relative weight and cost to each success and failure therein.” *Facchina Constr. Litigations*, 2021 WL 1118115, at \*2 (Del. Super. Ct. Mar. 24, 2021). Much like the all-or-nothing analysis, the Court may refuse to award costs altogether under the claim-by-claim approach if it determines that there “was not a distinct victory for either side.” *Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2020 WL 7861336, at \*7 (Del. Ch. Dec. 31, 2020). A notable departure from the all-or-nothing approach, however, is that the Court will likely consider a less-than-expected damages award when awarding costs under a claim-by-claim provision. *See Great Hill Equity*, 2020 WL at \*6 (“ . . . the Plaintiffs prevailed in proving some liability, but the Defendants prevailed in limiting the amount of damages. Given such results, I cannot find that either party ‘prevailed’ and

should be awarded fees . . . .”); *see also Facchina*, 2021 WL at \*3 (“Here, each party won on some claims and lost on others, however, overall, each party recovered far less than he or it sought.”).

**b. How the Court determines whether a fee-shifting provision is an “all-or-nothing” provision or a “claim-by-claim” provision**

Whether a cost-shifting provision is an all-or-nothing provision or a claim-by-claim provision is fundamentally a question of contract interpretation. *Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, at \*2 (Del. Ch. Apr. 27, 2004). This generally means that the Court will “look[] solely to th[e] document in determining which approach to utilize.” *Id.* The Court has explained that it “give[s] great weight” to the text of cost-shifting provisions because “the contracting parties have the opportunity to negotiate” the contents of the provision before it goes into effect, so its language should be a fair representation of their intent. *Knight v. Grinnage*, 1997 WL 633299, at \*3 (Del. Ch. Oct. 7, 1997).

The Court of Chancery has a strong presumption in favor of the all-or-nothing interpretation, so much so that it is referred to as the “traditional application” of cost-shifting provisions. *Senior Hous. Cap., LLC v. SHP Senior Hous. Fund, LLC*, 2013 WL 1955012, at \*44 (Del. Ch. May 13, 2013). For instance, the Court considers the mere use of “the common term ‘prevailing party’” as evidence that the parties intended the provision to “be applied by the court as it has traditionally done so” under the all-or-nothing approach. *Comrie*, 2004 WL at \*2 (stating that the term “prevailing party” “clearly provides for an all-or-nothing approach”); *see also Brandin v. Gottlieb*, 2000 WL 1005954, at \*28 (Del. Ch. July 13, 2000) (applying the reasoning of *Comrie* to a provision that awarded costs to “the party prevailing in any action”). However, while typically sufficient to invoke the all-or-nothing approach, the term “prevailing party” is certainly not necessary. Rather, to overcome the presumption in favor of the all-or-nothing approach, a cost-shifting provision must “include a term that *permits* the award of less than all of

a partially prevailing party's fees.” *Duncan v. STTCPL, LLC*, 2020 WL 829374, at \*15-16 (Del. Super. February 19, 2020) (“Absent language . . . permitting a claim-by-claim analysis, a predominance in the litigation analysis is appropriate. It must be all or nothing.”) (emphasis added).

The parties must use “clear and unequivocal language” to authorize claim-by-claim cost-shifting. *Facchina Constr. Litigations*, 2021 WL 1118115, at \*2 (Del. Super. Ct. Mar. 24, 2021). Parties “eschew[] a claim-by-claim approach” when they “fail[] to insert any language . . . that would authorize the court to exercise discretion to award less than ‘all’ the prevailing party's fees.” *Brandin*, 2000 WL at \*28. “In the absence of any qualifying language that fees are to be awarded claim-by-claim,” the Court will interpret “a contractual provision entitling the prevailing party to fees . . . in an all-or-nothing manner.” *AFH Holding & Advisory, LLC v. Emmaus Life Scis., Inc.*, 2014 WL 1760935, at \*2 (Del. Super. Ct. Apr. 16, 2014) (“ . . . the contractually agreed upon language of ‘the prevailing party in any such dispute’ does not mandate that the fee-shifting provision must be applied on a claim-by-claim basis . . .”). The case law shows that this is a demanding standard to meet. To-date, the only provisions that have been clear enough to invoke claim-by-claim fee shifting in our jurisdiction have been drafted to award costs to a party that “prevails in part, and loses in part.” *Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2020 WL 7861336, at \*3 (Del. Ch. Dec. 31, 2020); *Facchina*, 2021 WL at \*2.

## **II. THE COURT OF CHANCERY SHOULD INTERPRET SECTION 10.10 AS AN “ALL-OR-NOTHING” PROVISION**

The Defendants have at least two arguments for why Section 10.10 of the Merger Agreement is a claim-by-claim provision. First, Section 10.10 does not use the precise phrase “prevailing party.” The Court of Chancery has considered this phrase to be strong evidence of an intent to trigger the default all-or-nothing approach, so the Defendants might argue that its absence

signals the opposite intent or, at the very least, a lack of clarity surrounding the parties' intent. *See Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505 (Del. Ch. Apr. 27, 2004); *Brandin v. Gottlieb*, 2000 WL 1005954 (Del. Ch. July 13, 2000). In response, we should argue that the Merger Agreement's use of the phrase "resolved in the favor of a Party hereto" is the functional equivalent of the phrase "prevailing party" and should thus be afforded the default all-or-nothing interpretation for the same reasons given by the *Comrie* court. *Comrie*, 2004 WL at \*2 (when a provision is "negotiat[ed] by sophisticated parties," the use of a term like "prevailing party" means the provision "clearly provides for an all-or-nothing approach"); *see also Brandin*, 2000 WL at \*28 (holding that the phrase, "the party prevailing in any action," was the functional equivalent of the term "prevailing party"). Moreover, the absence of the phrase "prevailing party" does nothing to render a provision clear enough to overcome the traditional presumption in favor of the all-or-nothing approach. *See Duncan v. STTCPL, LLC*, 2020 WL 829374, at \*16 (Del. Super. February 19, 2020) (holding that a provision providing for recovery of fees incurred "in connection with the successful enforcement of [the Agreement] . . . must be all or nothing").

The Defendants' stronger argument is that Section 10.10 of the Merger Agreement is a claim-by-claim provision because it awards costs in relation to any "claim" brought pursuant to the Agreement. JX-0000. The term "claim" has not been used in the all-or-nothing provisions we have identified in the precedent. The Defendants can highlight this distinction and will likely attempt to capitalize on it by arguing that the choice of the term "claim" clearly exhibits the parties' intent to establish claim-by-claim cost-shifting. Our response should highlight the "traditional" preference for applying the all-or-nothing approach and the significant clarity required to overcome that preference. *Senior Hous. Cap., LLC v. SHP Senior Hous. Fund, LLC*, 2013 WL 1955012, at \*44 (Del. Ch. May 13, 2013). Two considerations from the claim-by-claim case law

show that the use of the term “claim” in Section 10.10 of the Merger Agreement is, without more, not clear enough to “authorize” claim-by-claim cost-shifting. *Brandin*, 2000 WL at \*28. First, the provisions from the claim-by-claim case law left no room for ambiguity. See *Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2020 WL 7861336, at \*3 (Del. Ch. Dec. 31, 2020) (holding a provision that awarded costs to a party that “prevails in part[] and loses in part,” to be a claim-by-claim provision). The use of the term “claim” in Section 10.10, on the other hand, does leave room for ambiguity, as it could reasonably be understood to refer to a specific claim within an action or the general claim giving rise to the action. Second, Section 10.10 of the Merger Agreement mandates that a party “shall be entitled to, and awarded, its costs,” while the provisions from the claim-by-claim case law authorized the Court to award fees “on an equitable basis.” See *Great Hill*, 2020 WL at \*7; *Facchina Constr. Litigations*, 2021 WL 1118115, at \*2 (Del. Super. Ct. Mar. 24, 2021). This second distinction is critical, as the provision itself must “authorize the Court to exercise discretion to award less than ‘all’ the prevailing party’s fees,” and Section 10.10 arguably does not give that authorization. *Brandin*, 2000 WL at \*28.

Ultimately, the interpretation of Section 10.10 of the Merger Agreement will likely be a close call. The Defendants’ argument regarding the use of the term “claim” has some immediate appeal. Upon further inspection, though, we have a solid channel of argument through the claim-by-claim case law and the background principles of interpretation. Section 10.10 is much more ambiguous than the few provisions our jurisdiction has found to be claim-by-claim provisions, and this ambiguity should be resolved in line with the traditional preference for all-or-nothing provisions.

### **III. IF THE “ALL-OR-NOTHING” APPROACH APPLIES, PLAINTIFFS SHOULD BE CONSIDERED THE “PREDOMINATING PARTY” IF THEY WIN ON BREACH BUT LOSE ON FRAUD**

Since the Defendants have already admitted to one of Plaintiff's allegations regarding breach of contract, we are reasonably confident that Plaintiff will succeed on the issue at trial. JX-0000. There is more concern, however, over Plaintiff's claim of fraud. If the Court interprets Section 10.10 to be a claim-by-claim provision, then the analysis explained above will apply. But if the Court interprets Section 10.10 as an all-or-nothing provision, then the Defendants will likely argue that Plaintiff's loss on fraud prevents them from claiming prevailing party status. For the reasons discussed below, we should be able to preserve prevailing party status for the Plaintiff fairly easily in the event they win on breach but lose on fraud.

**a. A party that wins on breach but loses on fraud will still “predominate” the litigation**

To support the proposition that a party who wins on breach but loses on fraud is still the “predominating” party for purposes of the fee-shifting analysis, we can look to *AFH Holding & Advisory, LLC v. Emmaus Life Scis., Inc.*, which bears very close relation to our case. 2014 WL 1760935 (Del. Super. Ct. Apr. 16, 2014) (“There were two sets of issues in this litigation—breach of contract and fraud.”). The provision at issue in *AFH Holding* read that “[t]he prevailing party in any such dispute shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses.” *Id.* at \*2. The Defendants first argued for the Court to “interpret[] ‘dispute’ to mean that the provision should be applied to each of Emmaus' four substantive claims individually.” *Id.* Citing the long line of precedent supporting the traditional all-or-nothing approach to fee-shifting provisions, the Court quickly determined that the term “dispute . . . does not mandate that the fee-shifting provision must be applied on a claim-by-claim basis.” *Id.* The Court then went on to explain that, because “[t]he breach of contract claims [were] the substantive crux of [the] litigation,” there was “no room” for the Defendants to claim prevailing party status under the all-or-nothing approach based on their claim of fraud. *Id.* at \*3. The Court held this to



be true before the issue of fraud was even decided, stating that “a voluntary dismissal of the fraud claims by [the Plaintiff], or a dismissal by the Court, would not alter [the Plaintiff’s] status as the prevailing party.” *Id.*

**b. A party that wins less than 50% of the damages it seeks can still predominate**

If Plaintiff wins on breach but loses on fraud, their damages will be limited to the Merger Agreement’s indemnity cap of \$5.25 million. JX-0000. The Defendants might emphasize the disparity between this award and the damages Plaintiff is seeking in the litigation (\$37.7 million) and argue that the difference is just too great to consider either party as having prevailed. In support of this claim the Defendants can cite *Vianix Delaware LLC v. Nuance Commc’ns, Inc.*, which held that where “both [the Plaintiff] and [the Defendant] [won] on several claims and contentions and [the Plaintiff] recover[ed] what may be millions of dollars in damages, but far less than it claimed, . . . there was no prevailing party” under an all-or-nothing provision. 2010 WL 3221898, at \*29 (Del. Ch. Aug. 13, 2010).

There are at least two reasons why the Court should not consider *Vianix* to be sufficient support for this potential claim by the Defendants. First, the *Vianix* holding does not disturb the ruling in *AFH Holding* that, in a litigation involving only claims for breach of contract and fraud, the breach of contract claim will be considered the “substantive crux of [the] litigation.” *AFH Holding*, 2014 WL at \*3. The *Vianix* Court was dealing with claims regarding the allocation of royalties over a long period of time; claims of this complexity and duration are more readily divisible than breach of contract and fraud claims stemming from the same merger. *Vianix*, 2010 WL at \*29. Second, and perhaps more important, is the fact that there is a wealth of precedent supporting the argument that the Court typically doesn’t consider damages when determining whether a party is the “prevailing party” under an all-or-nothing provision. *See, e.g., World-Win*

*Mktg., Inc. v. Ganley Mgmt. Co.*, 2009 WL 2534874, at \*2 (Del. Ch. Aug. 18, 2009) (“Thus, ‘in the usual case, whether a party prevailed is determined by reference to substantive issues, not damages.’”) (quoting *W. Willow-Bay*, 2009 WL 458779, at \*9); *see also Graham v. Keene Corp.*, 616 A.2d 827, 829 (Del. 1992) (“It is a principle of law that in considering an award of costs *the prevailing party for such purposes is the one in whose favor a verdict is returned.*”) (emphasis added). Our jurisdiction has further explained that conflating the damages remedy with the substantive issues at litigation threatens to turn a party that lost on the merits into the “prevailing party” for the purposes of a fee-shifting analysis, a result that “is simply contrary to the reality of the litigation as well as the dictates of common sense.” *Comrie*, 2004 WL at \*3. With this precedent in mind, we have a strong argument that the *Vianix* holding was about the substantive issues at play in the case, not damages.

#### IV. CONCLUSION

While the threshold issue of Section 10.10’s interpretation seems to be a close call, we have good arguments to show why the Court should interpret it to be an all-or-nothing provision. These arguments are rooted in the strong presumption – and preference – for interpreting fee-shifting provisions as all-or-nothing provisions. The Defendants have the burden of overcoming this presumption, and there is good reason to believe that their argument for doing so – that Section 10.10 uses the term “claim” – does not carry that burden.

If the Court interprets Section 10.10 to be an all-or-nothing provision, then, given a victory on breach of contract, there is good reason to believe that Plaintiff will be the “prevailing party” even if they lose on their claim of fraud. However, if the Defendants persuade the Court to interpret Section 10.10 as a claim-by-claim provision, then the fees available to Plaintiff will be limited to

those associated with the claims they are victorious on. In this scenario, Plaintiff would also likely be liable to the Defendants for their fees associated with the issues that we lose on.

**Applicant Details**

First Name **Nathaniel**  
 Last Name **Drum**  
 Citizenship Status **U. S. Citizen**  
 Email Address [drumnc21@wfu.edu](mailto:drumnc21@wfu.edu)  
 Address

**Address**

**Street**  
**525 Crowne Oaks Circle**  
**City**  
**Winston-Salem**  
**State/Territory**  
**North Carolina**  
**Zip**  
**27106**  
**Country**  
**United States**

Contact Phone Number **(828) 234-4485**

**Applicant Education**

BA/BS From **University of North Carolina-Chapel Hill**  
 Date of BA/BS **May 2018**  
 JD/LLB From **Wake Forest University School of Law**  
<http://www.law.wfu.edu>  
 Date of JD/LLB **May 13, 2024**  
 Class Rank **10%**  
 Law Review/Journal **Yes**  
 Journal(s) **Wake Forest Law Review**  
**Wake Forest Journal of Business & Intellectual Property**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **American Bar Association National Moot Court Team**  
**Wake Forest Moot Court Board**

**Bar Admission**

### **Prior Judicial Experience**

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

#### **Recommenders**

Carlson, Kenneth  
kcarlson@constangy.com  
3367216843

Davis, Timothy  
davistx@wfu.edu

DiMuzio, Ashley  
adimuzio@belldavispitt.com

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



Nathaniel C. Drum  
525 Crowne Oaks Circle  
Winston-Salem, NC 27106  
Telephone: (828) 234-4485  
Email: drumnc21@wfu.edu

Judge Jamar K. Walker  
U.S. District Court for the Eastern District of Virginia  
600 Granby Street  
Norfolk, Virginia 23510

Dear Judge Walker:

I am writing to express my interest in a term clerkship with your chambers beginning in Fall 2024. I am currently a third-year student at Wake Forest University School of Law, where I have had the pleasure to serve as the Captain of the National Trial Team, a member of the American Bar Association National Moot Court Team, and a staff editor for the *Wake Forest Law Review*, the *Wake Forest Journal of Business & Intellectual Property*, and the symposium edition of the *Harvard Journal of Law & Policy*.

As an aspiring litigator, I am particularly interested in a clerkship with your chambers due to the wide variety of cases and issues that come before your Court. Further, as a native of the Carolinas, with a strong network of friends and family throughout Virginia, North Carolina, and South Carolina, I hope to begin building connections in the Virginia legal community. With my long-term goal of building a litigation practice in the Norfolk area, the opportunity to serve as a clerk for the United States District Court for the Eastern District of Virginia through your chambers would be an invaluable experience.

Enclosed are my resume, transcripts, and a writing sample. The writing sample is a simulated memorandum order and opinion written during my elective Writing for Judicial Chambers course denying a litigant's motion to transfer venue. Also enclosed are letters of recommendation from the following individuals, who are also willing to answer any questions you may have:

Timothy Davis  
Wake Forest School of Law  
1834 Wake Forest Rd.  
Winston-Salem, NC 27106  
davistx@wfu.edu  
(336) 758-3670

Kenneth Carlson, Jr.  
Constangy, Brooks, Smith & Prophete  
One West 4th St.; Suite 850  
Winston-Salem, NC 27101  
kcarlson@constangy.com  
(336) 721-6843

Ashley DiMuzio  
Bell, Davis & Pitt  
101 N. Cherry St.; Suite 600  
Winston-Salem, NC 27101  
adimuzio@belldavis pitt.com  
(336) 722-3700

I am happy to provide a list of independent references, as well as any other information or documentation that would be helpful to you. Thank you for your time and consideration, and I would welcome the opportunity to discuss this matter further.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nathaniel C. Drum'.

Nathaniel C. Drum

Enclosures

# Nathaniel C. Drum

525 Crowne Oaks Circle, Winston-Salem, NC 27106 || (828) 234-4485 || drumnc21@wfu.edu

## Education

### Wake Forest University School of Law

Candidate for Juris Doctor, May 2024

Winston-Salem, NC

GPA: 3.75 (Top 8%)

#### Honors and Awards:

- Pro Bono Honor Society
- Cynthia J. Zeliff Mock Trial Competition Semi-Finalist
- 1L Trial Competition Honorable Mention
- Edwin M. Stanley Moot Court Competition Top 16 Finalist
- Dean Suzanne Reynolds Award for highest grade in Legal Research II; Pre-Trial Practice & Procedure; and Trade Secrets & Unfair Competition

### University of North Carolina at Charlotte

Paralegal Certificate, December 2018

Charlotte, NC

### University of North Carolina at Chapel Hill

Bachelor of Arts in Political Science, May 2018

Second Major in Peace, War, and Defense; Minor in History

Chapel Hill, NC

## Law School Leadership & Activities

- National Mock Trial Team Captain
- *Wake Forest Law Review*: Staff Editor
- *Wake Forest Journal of Business & Intellectual Property*: Staff Editor
- *Harvard Journal of Law & Policy*: Symposium Edition Staff Editor
- Student Trial Bar: 1L Mock Trial Competition Co-Chair
- American Bar Association Moot Court Competition Team Member
- Teaching Assistant for Contracts I
- Pro Bono Project: Expungements Clinic Coordinator
- Federalist Society: Vice President for Speakers; 1L Class Representative
- First Generation Law Society: Mentorship Committee Co-Chair

## Experience

### Restoring Integrity & Trust in Elections

Summer Law Clerk

Washington, D.C.

June 2023 - July 2023

- Conducted a legal research and a historical analysis of voting rights laws during the ratification of the Constitution, during the ratification of the Fourteenth Amendment, and during the ratification of each suffrage amendment in order to identify areas for potential future litigation
- Drafted, critiqued, summarized, and edited court filings including Motions to Intervene, Motions to Dismiss, and Motions for Summary Judgment in ongoing election law litigation cases

### Honorable Hunter Murphy, North Carolina Court of Appeals

Judicial Intern

Raleigh, NC

July 2022 - December 2022

- Drafted bench memoranda, court orders, and judicial opinions for complex criminal and civil cases
- Reviewed and analyzed appellate briefs and conducted legal research in order to prepare Judge Murphy for oral arguments and case conferences

### Truist Financial

Legal Intern

Winston-Salem, NC

June 2022 - July 2022

- Conducted legal research and drafted memoranda regarding liability for electronic service outages
- Compiled and analyzed new and amended state statutes regulating the collection, storage, use, and distribution of consumer data and private information

### Moore & Van Allen

1L Summer Associate

Charlotte, NC

May 2022 - June 2022

- Conducted research and drafted memoranda regarding various issues including contract interpretation, property rights, and evidentiary standards
- Accompanied attorneys and created summary reports regarding civil motions hearings, depositions, and bankruptcy court proceedings

**James, McElroy & Diehl**

Family Law Paralegal

Charlotte, NC

December 2020 - July 2021

- Wrote, reviewed, and edited complaints, answers, and motions relating to all family court matters including child support, child custody, spousal support, and equitable distribution
- Collaborated with attorneys to prepare for trials and motion hearings by writing issue synopses, creating evidence binders, and researching relevant case law and statutes

**North Carolina Department of Public Safety**

Probation and Parole Officer

Gastonia, NC

April 2020 - December 2020

- Appeared in court and presented case details to the court including steps taken to engage defendants in community activities and the impact of those initiatives on defendants' conduct
- Reviewed case files and met with defendants to make connections with city, county, and state resources and address identified criminogenic needs to reduce the risk of recidivism

**North Carolina Department of Public Safety**

Judicial Services Coordinator

Newton, NC

July 2019 - April 2020

- Interviewed and elicited information from convicted offenders regarding their contact information, demographics, employment, education, and criminal background
- Analyzed information and made community service work-site placement decisions based on various factors, including the defendants' availability, criminal background, work history, and skill set

**Publications**

*Copyrighting the Courthouse: The Rise of Copyright Claims on Live Broadcasts of Public Trials*, Wake Forest J. Bus. & Intell. Prop. L. Blog, <http://ipjournal.law.wfu.edu/blog/>. *Publication Forthcoming*

**Community Involvement**

The Fund for American Studies Summer Law Fellow

North Carolina Summer Appellate Seminar Participant

North Carolina Advocates for Justice & North Carolina Bar Foundation Mock Trial Competition Volunteer

MockOn High School Mock Trial Competition Volunteer Judge

Elon University Carolina Classic Mock Trial Competition Volunteer Judge

Charlotte Curling Association Volunteer Curling Instructor



Student Name: **Nathaniel Corey Drum**

ID: 06423745

Birthdate: 03/07

Majors: Law

Entry Date: Aug 16, 2021

Certificates and  
Foreign Area Studies

Minors:

Office of the University Registrar  
P.O. Box 7207  
Winston Salem NC 27109-7207

Date Printed: 09-JUN-2023

Page: 1

**School of Law****Issued To:****Nathaniel Drum**  
**Parchment: TWB7DZ6K**

Course Level: Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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**INSTITUTION CREDIT:****Fall 2021**

LAW 101	Contracts I	3.00 A	12.000
LAW 103	Criminal Law	3.00 A-	11.010
LAW 104	Civil Procedure I	3.00 A-	11.010
LAW 108	Torts	4.00 A-	14.680
LAW 110	Legl Analysis, Writing & Res I	2.00 B+	6.660
LAW 112	LAWR I (Research)	0.50 A-	1.835
LAW 122	Professional Development	0.00 S	0.000
Ehrs: 15.50 GPA-Hrs: 15.50 QPts: 57.195 GPA: 3.690			

**Spring 2022**

LAW 102	Contracts II	3.00 A	12.000
LAW 105	Civil Procedure II	3.00 A-	11.010
LAW 111	Property	4.00 B+	13.320
LAW 113	LAWR II (Research)	0.50 A+	2.000
LAW 119	Legl Analysis, Writing & Res II	2.00 A	8.000
LAW 120	Constitutional Law I	3.00 A-	11.010
LAW 122	Professional Development	1.00 A+	0.000
Ehrs: 16.50 GPA-Hrs: 15.50 QPts: 57.340 GPA: 3.593			

**Fall 2022**

LAW 207	Evidence	4.00 A	16.000
LAW 219	Appellate Advocacy LAWR III	2.00 B+	6.660
LAW 340	Externship	2.00 H	0.000
LAW 522	Jrnl of Bus & Intel Prop Law	0.00 P	0.000
LAW 570	Pre-Trial Practice & Procedure	3.00 A+	12.000
LAW 610	Trial Practice Lecture	0.00 P	0.000
LAW 610L	Trial Practice Lab	3.00 H	0.000
LAW 615	Trial Team	1.00 H	0.000
Ehrs: 15.00 GPA-Hrs: 9.00 QPts: 34.660 GPA: 3.851			

**Spring 2023**

LAW 200	Legislation and Admin Law	3.00 A	12.000
LAW 305	Professional Responsibility	3.00 A	12.000
LAW 340	Externship	2.00 W	0.000
LAW 401	Agency	2.00 A	8.000
LAW 427	Writing for Judicial Chambers	2.00 B	6.000
LAW 427L	Leg Anal Writ & Research IV	0.00 P	0.000
LAW 522	Journal of Business & IP Law	2.00 P	0.000
LAW 597	Trade Secrets & Unfair Compet	2.00 A+	8.000
LAW 615	Trial Team: National	1.00 H	0.000
Ehrs: 15.00 GPA-Hrs: 12.00 QPts: 46.000 GPA: 3.833			

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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**Fall 2023****IN PROGRESS WORK**

LAW 479	Creditrs' Rghts & Bnkruptcy (ON)	4.00	IN PROGRESS
LAW 514	Federal Courts	3.00	IN PROGRESS
LAW 533	Artificial Intelligence Law	2.00	IN PROGRESS
LAW 538	Antitrust	2.00	IN PROGRESS
LAW 576	Complex Civil Litigation	3.00	IN PROGRESS
LAW 636	Construction Law	2.00	IN PROGRESS
In Progress Credits		16.00	

**\*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\***

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL	62.00	52.00	195.195	3.753

**INSTITUTION**

TOTAL	0.00	0.00	0.000	0.000
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**TRANSFER**

OVERALL	62.00	52.00	195.195	3.753
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**\*\*\*\*\* END OF TRANSCRIPT \*\*\*\*\***

**WAKE FOREST UNIVERSITY** CEEB Code = 5885 FICE Code = 002978 Email: registrar@wfu.edu Website: registrar.wfu.edu Phone: (336) 758-5207 Fax: (336) 758-6056

For questions or further information, contact the Office of the University Registrar at PO Box 7207, Winston-Salem, NC 27109. The Office of the University Registrar issues official transcripts for all Undergraduates and the Graduate, Divinity and Business Schools.

**VALUE SYSTEM**

From Fall 1975 to Summer 2001, the undergraduate school awarded course credits. Credits may be converted into conventional semester hours by multiplying the assigned credits by 0.9 (i.e., 4 credits= 3.6 semester hours). Students matriculating in the undergraduate schools beginning in Fall 2001 receive semester hours. The Graduate and Divinity Schools award conventional semester hours.

After Fall of 1998, the undergraduate and graduate schools changed to a plus/minus grading scale. At that time, the Graduate School also changed from a 3.00 point scale to a 4.00 point scale. Graduate students who matriculated before Fall 1998 but were still enrolled as of Fall 1998 had all earlier grades converted to the 4.00 point scale.

**TRANSFER CREDITS**

Transfer credit may be counted toward the graduation requirements, but grades earned in the transfer course are not used in calculating the Wake Forest grade point average. The grades appearing on the Wake Forest transcript are the actual grades earned, but the units shown are only those accepted for transfer by Wake Forest.

Departmental abbreviations are listed in the Bulletins. Some courses transferred from other institutions may have abbreviations not found in the Bulletin.

Repeated courses are flagged I (included in GPA) or E (excluded in GPA). For classes taken and repeated at Wake Forest, only one grade remains in the cumulative grade point average, based on Bulletin regulations.

**DEFINITION OF GRADES AND GRADE POINT VALUES**

UNDERGRADUATE			GRADUATE			LAW			BUSINESS (Graduate)		
Calculated in grade point average:			Starting with the fall 1997 semester, graduate level courses changed from 300, 400, and 500 level courses to the current 600, 700, and 800 level courses.			COURSE NUMBER SYSTEM: Courses numbered 100-199 are required first-year courses. Courses numbered 200-899 are upper-level required and/or elective courses. Accepted transfer credits may be numbered 900-999, unnumbered and indicated as such, or Wake Forest equivalent courses.			Students who began the program prior to July 2009, are graded on a 9-point grading system. Students admitted after that date are graded on a 4-point grading system.		
			System Prior to Summer 1998						Calculated in grade point average:		
			Calculated in grade point average:			Calculated in grade point average:			4 Point Grading System:		
Grade	Definition	Points	Grade		Points per Hour	Grade			Grade		Points
A	Exceptionally high achievement	4.00	A		3.00	A+		4.00	A		4.00
A-		3.67	B		2.00	A		4.00	A-		3.67
B+		3.33	C		1.00	A-		3.67	B+		3.33
B	Superior	3.00	F		0.00	B+		3.33	B		3.00
B-		2.67	Not calculated in grade point average:			B		3.00	B-		2.67
C+		2.33	Grade	Definition		B-		2.67	C+		2.33
C	Satisfactory	2.00	P	Passing		C+		2.33	C		2.00
C-		1.67	F	Failure in Pass/Fail mode		C		2.00	F		.00
D+		1.33	NR	Not reported in Satisfactory/Unsatisfactory mode		C-		1.67	Not calculated in grade point average:		
D		1.00	I	Incomplete in Satisfactory/Unsatisfactory mode		D+		1.33	I	Incomplete	
D-	Passing but unsatisfactory	.67	S	Satisfactory		D		1.00	P	Pass/Fail Course	
F	Failure	.00	U	Unsatisfactory		D-		0.67	AU	Audit	
I	Incomplete	.00	AUD	Audit		F		0.00	WD	Withdrawn from the University	
NR	Grade not reported	.00	DRP	Drop approved by the Dean after regular drop period		Not calculated in grade point average:			WP	Withdrawn passing from a course	
WF	Withdrawn Failing	.00	NC	Non-credit non-grade courses		H	Honors		WF	Withdrawn failing from a course	
F	Irreplaceable F	.00	WP	Withdraw Passing		P	Pass		E	Exempt from a course	
Not calculated in grade point average:			WF	Withdraw Failing		LP	Low Pass		T	Course transfer	
EX	Exemption		System after Summer 1998			FPF	Failure in Pass/Fail grade mode		X	Course waived	
P	Passing		Calculated in grade point average:			AU	Audit		9 Point Grading System:		
FPF	Failure in Pass/Fail grade mode		Grade	Definition	Points	I	Incomplete		Grade		Points
IPF	Incomplete in Pass/Fail grade mode		A	Excellent	4.00	NC	No Credit		A+		9
NRPF	Not reported in Pass/Fail grade mode		A-		3.67	S	Satisfied		A		8
AU	Audit		B+		3.33	TR	Transfer Credit Accepted		A-		7
DR	Official drop approved by the Dean		B	Good	3.00	W	Withdrew from Course		B+		6
NC	Non-credit non-graded course		B-		2.67	WD	Withdrew from School		B		5
WD	Withdrawal from the university		C+		2.33	GRADE SUFFIX: V Waived; X Course not calculated in GPA; * Grade not calculated in GPA, credit earned only.			B-		4
T (grade)	Transfer Credit		C	Low Passing	2.00	For classes graduating prior to 2019, see: <a href="http://registrar.law.wfu.edu/policies/">http://registrar.law.wfu.edu/policies/</a> .			C+		3
TNS	Dual-Enrollment Transfer Credit		F	Failure	.00				C		2
W	Course Withdrawal		I	Incomplete	.00				C-		1
			NR	Grade not reported	.00						
			Not calculated in grade point average:						PROFESSIONAL STUDIES		
			ISU	Incomplete in Satisfactory/Unsatisfactory grade mode					Calculated in grade point average:		
			P	Passing					Grade		Points
			FPF	Failure in Pass/Fail grade mode					A		4.00
			IPF	Incomplete in Pass/Fail grade mode					A-		3.67
			NRPF	Not reported in Pass/Fail grade mode					B+		3.33
			NR	Not reported in Satisfactory/Unsatisfactory mode					B		3.00
			S	Satisfactory					B-		2.67
			U	Unsatisfactory					C+		2.33
			AU	Audit					C		2.00
			DR	Official drop approved by Dean					F		.00
			NC	Non-credit non-grade course					Not calculated in grade point average:		
			WD	Withdrawal from the University					I	Incomplete	
			WF	Withdrawal Failing					WD	Withdrawn	
			WP	Withdrawal Passing					WF	Withdrawn Failing	
									T	Transfer	

June 19, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I understand that Nathaniel C. Drum is applying for a clerkship position with your Court. Please know that last spring I had the pleasure of having Nate in my trade secrets and unfair competition course at the Wake Forest University School of Law, and that I highly recommend him for the job.

When I teach trade secrets and unfair competition law, I do so as an adjunct professor whose primary vocation is a labor and employment defense attorney. Therefore, I come to the class with a critical eye toward the practical as well as the academic, while holding my students to a high standard of preparation and performance. Nate demonstrated excellent skills in both, as he was always prepared for our weekly class readings, presented thoughtful questions and insights during class discussions, and showed an ability to quickly recognize the key facts and law at issue in a matter. In addition, he not only received the top grade, which is never an easy task given the comprehensiveness of my exams, but frankly had one of the best final exams of any student since I first started teaching the class 20 years ago.

It's also worth noting that I challenge my students with not just reading and understanding case law and statutes, but also with interpreting and applying that law to factual patterns they'll likely encounter during their future legal practice and which demand quick, alternative thinking. Nate was always prepared and contributed in meaningful ways to that discussion, showing an innate ability to assess and analyze situations for advising "clients" with options and recommended approaches. As you can probably imagine, those traits contributed greatly to his performing so well on our class essay and short answer final exam, which combined with his excellent writing abilities, outstanding grades, honors such as being named to the Pro Bono Honor Society and chosen as a staff editor of the Wake Forest Law Review, and numerous meaningful extracurricular activities, should also make him a valuable addition to your Court.

Unrelated to my trade secrets course, let me also say that I had the pleasure of "judging" a practice session for the law school's National Mock Trial Team on which Nate was a captain. During that pre-competition session before a mock jury, Nate demonstrated excellent skills in translating legal concepts into practical understanding, while presenting a cohesive case theme and theory through focused witness examinations, properly admitting and objecting to exhibits and testimony being offered into evidence, and making persuasive oral arguments. All the while navigating multiple procedural and evidentiary issues that could significantly affect trial strategy and what the jury might consider in reaching a verdict, and which could quite frequently be encountered in cases before your Court.

On top of this, Nate is simply a pleasure to be around. He works hard, but even more appears to enjoy the hard work and is quite respectful and friendly in the process. If this is also what you're looking for in a clerk – which, by the way, is always at the top of my list in hiring for our law firm – then I would add that as well to my strong recommendation for offering Nathaniel C. Drum a federal clerkship.

Please let me know if you have any questions concerning this letter, or if you would like to discuss Nate's application any further. With highest regards, I remain

Very truly yours,

Kenneth P. Carlson, Jr.

Kenneth Carlson - kcarlson@constangy.com - 3367216843



TIMOTHY DAVIS  
John W. & Ruth H. Turnage  
Professor of Law  
E-mail: [davistx@wfu.edu](mailto:davistx@wfu.edu)  
Phone: (336) 758-3670  
Fax: (336) 758-4496

Re: Nathaniel C. Drum

Dear Judge:

It is with great pleasure that I recommend Nathaniel Drum for a law clerk position. Nate was a student in my Contracts I and II classes and I am comfortable commenting on his potential as a law clerk.

Nate is among a select group of students who have the range of abilities and personality traits that mark them as special. I vividly recall taking notice of Nate during the first week of Contracts I classes. Nate asked a question that demonstrated intellectual depth and curiosity. Based on additional exchanges, I formed the impression of a young man who possesses tremendous potential and the intangibles that will enable him to have a successful legal career.

Nate's performance during his first year of law school confirmed my initial observations of him. Whether in the context of class-related academic performance (Nate is in the top 9% of his class and received the second highest grades in my Contracts I & II), law review or co-chair of the First-Generation Law Society, Nate has set himself apart through his fine mind, mental agility, and his commitment to excellence, and service. Moreover, Nate is a well-balanced young man. He is respectful, pleasant, and possesses a delightful sense of humor. Nate's values and maturity also are such that if he is afforded the opportunity to clerk, he will act in a professional and confidential manner.

I recommend Nate to you with enthusiasm and would be pleased to discuss his qualifications to serve as your law clerk. My telephone number is 336-758-3670.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Timothy Davis'.


Timothy Davis  
John W. & Ruth H. Turnage  
Professor of Law

### Writing Sample

Below is an excerpt from a draft memorandum order and opinion which was prepared as part of my elective legal analysis, writing, and research (LAWR IV) class, Writing for Judicial Chambers.

The assignment required that I review a pending Motion to Transfer Venue in the case of *United States v. Oliveras*, 1:21-cr-00738 (D.D.C.) before Judge Beryl A. Howell. I was then provided with a brief, fictitious, email from Judge Howell instructing that I draft a memorandum order and opinion denying the motion.

As part of a written assignment for a course grade, I hereby certify that I received no assistance in drafting the memorandum and that the writing sample below has been unedited by others.

  
\_\_\_\_\_

**MEMORANDUM ORDER & OPINION**

Defendant Michael Oliveras (“Oliveras”) is charged with four misdemeanors stemming from his alleged conduct at the U.S. Capitol on January 6, 2021. Specifically, Oliveras is charged with: (1) entering and remaining in a restricted building or grounds in violation of 18 U.S.C. § 1752(a)(1); (2) disorderly and disruptive conduct in a restricted building or grounds in violation of 18 U.S.C. § 1752(a)(2); (3) disorderly conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D); and (4) parading, demonstrating, or picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G). Currently pending before this Court is Defendant’s Motion for Transfer of Venue (“Def.’s Mot.”), ECF No. 36, filed on November 3, 2022.

Oliveras asserts two bases for his Motion: (1) that pursuant to Fed. R. Crim. P. 21(a), this Court should transfer his case for prejudice; and (2) that pursuant to Fed. R. Crim. P. 21(b), this Court should transfer his case for convenience. *Id.*

As explained below, these arguments are without merit. Therefore, this Court joins every other Judge on this Court to have considered—and consistently rejected—these arguments from defendants charged for their conduct relating to the events of January 6, 2021. Accordingly, the Motion is denied.

**I. DISCUSSION**

Oliveras first argues that this Court must grant the Motion and transfer his case to the District of New Jersey because community hostility, primarily driven by media coverage of the events of January 6, 2021, has created a presumption of juror prejudice, making it impossible for him to receive a fair and impartial trial in the District of Columbia (“the District”). *Id.* at 1-7. Oliveras then argues that this Court should exercise its discretion and grant the Motion “for convenience.” *Id.* at 8-13.

**A. Transfer for prejudice, pursuant to Fed. R. Crim. P. 21(a), is unwarranted.**

Oliveras argues that community hostility surrounding this case is so severe that this Court should presume juror prejudice, without conducting voir dire, thus requiring that this case be transferred. Specifically, Oliveras argues that the size and characteristics of Washington, D.C., when combined with the ongoing negative media coverage of the events of January 6, 2021, make it impossible for him to receive a fair and impartial trial.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .” U.S. Const. amend. VI. The right to an impartial jury does not necessitate that “jurors be totally ignorant of the facts and issues involved.” *Irwin v. Dowd*, 366 U.S. 717, 722 (1961); see also *Smith v. Phillips*, 455 U.S. 209, 217 (1982) (observing that “it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote.”). Rather, the Sixth Amendment protects the “right to be tried by jurors who are capable of putting aside their [pre-existing] personal impressions and opinions and rendering a verdict based solely on the evidence presented in court.” *United States v. Orenuga*, 430 F.3d 1158, 1162 (D.C. Cir. 2005). Nonetheless, when “the court is satisfied that so great a prejudice against the defendant exists in the [] district that the defendant cannot obtain a fair and impartial trial,” the court is compelled to transfer the case to another district. Fed. R. Crim. P. 21(a). Such transfers are a “basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955).

“[A] ‘thorough examination of jurors on voir dire’ is the most important tool for ensuring that a defendant receives a fair and unbiased jury.” *United States v. Garcia*, No. 21-0129 (ABJ), 2022 WL 2904352, at \*5 (D.D.C. Jul. 22, 2022) (quoting *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 554 (1976)). Without conducting a thorough voir dire to determine the “what the prospective juror has read and heard about the case and how his exposure has affected his

attitude towards the trial,” *United States v. Haldeman*, 559 F.2d 31, 69 (D.C. Cir. 1976), “a presumption of prejudice . . . attends only the extreme case.” *Skilling v. United States*, 56 U.S. 358, 381 (2010). In considering whether to presume prejudice, the Supreme Court in *Skilling* identified three factors for courts to consider: (1) the size and characteristics of the jury pool; (2) the type of information included in the media coverage; and (3) the time period between the arrest and trial, as it relates to the attenuation of the media coverage. *Skilling*, 56 U.S. at 378.

**1. The size and characteristics of the District’s jury pool do not support a finding of prejudice.**

With regard to the first *Skilling* factor, the size and characteristics of the jury pool, Oliveras argues that it weighs in favor of transfer because: (1) a large proportion of the District’s jury pool works for the federal government or have close connections to those who do; (2) even those who are unrelated to federal government employees were likely traumatized due to the events of January 6, 2021; and (3) a supermajority of District residents voted for President Joseph Biden during the 2020 election. Def.’s Mot. at 4-7. As explained below, these arguments are without merit.

Oliveras relies extensively on *Rideau v. Louisiana* to support his argument that the size and characteristics of the District support transferring venue. 373 U.S. 723 (1963). However, *Rideau* is clearly distinguishable from the case at bar. In *Rideau*, the defendant was charged with armed robbery, kidnapping, and murder in the Calcasieu Parish of Louisiana. *Id.* at 723-24. After his arrest, a video and audio recording of the defendant’s confession was broadcast on local news stations. *Id.* at 724. The recording was played three times over a period of days in which each broadcast was watched by audiences ranging from 24,000 to 53,000 people. *Id.* The parish was only home to a total of 150,000 people. *Id.* Prior to trial, the defendant moved for a transfer of venue based on the widespread broadcast of his recorded confession. *Id.* at 724-25. The Supreme



Court held that the trial court erred and should have granted the defendant's motion to transfer venue. *Id.* at 727. It reasoned that the extreme circumstances of the case, including the large portion of the small parish who had been exposed to the videotaped confession, made it impossible for the defendant to receive a fair trial. *Id.* at 726-27. Specifically, the Court noted that examining the voir dire record was not necessary because the particular characteristics of the small parish and the widely circulated broadcast made it impossible for the defendant to empanel a jury “who had not seen and heard [his] televised [confession].” *Id.* at 727.

As has been recognized by other judges in this District, “Washington is hardly a one-stoplight village, and it is much larger than districts in the handful of cases in which prejudice has been presumed,” such as in *Rideau. United States v. Ballenger*, No. 21-719 (JEB), 2022 WL 16533872, at \*2 (D.D.C. Oct. 28, 2022); *see also Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1044 (1991) (finding prejudice unlikely in a district smaller than this District); *Mu’Min v. Virginia*, 500 U.S. 415, 429 (1991) (refusing to presume prejudice in a district smaller than this District). Rather, “[g]iven [this District’s] large, diverse pool of potential jurors, the suggestion that twelve impartial individuals could not be empaneled is hard to sustain.” *Skilling*, 561 U.S. at 382.

Oliveras’s first contention that “a huge proportion of the District of Columbia residents either work for the federal government themselves or have friends and family who do,” while perhaps true, does not warrant a presumption of prejudice. Def.’s Mot. at 4. As the government notes in its opposition, “merely being employed by the federal government” does not inherently render a person incapable of serving as an impartial juror. Gov’t’s Opp’n Def.’s Mot. Transfer Venue (Gov’t’s Opp’n), ECF No. 42 at 3. While certainly numerous federal employees, such as the Capitol Police and Congressional staff, were impacted by the events of January 6, 2021, the

overwhelming majority were not. Further, as noted by the government, of the District's over 700,000 residents, more than 550,000 are not employed by the federal government. Gov't's Opp'n at 4. Therefore, even taking Oliveras's argument at face-value, that all federal government employees are irreparably prejudiced against him, the overwhelming majority of District residents do not fall within this category. Simply put, to presume that all federal employees, their friends, families, and neighbors, are incapable of impartiality in this case both wildly overestimates the direct impact of the January 6, 2021 events and underestimates the ability of District residents to serve impartially.

Oliveras's second contention that "even District residents that have no direct connection to the government reported feeling deeply traumatized by the events [of January 6, 2021]," again, while perhaps true, does not warrant a presumption of prejudice. Def.'s Mot. at 5. Oliveras notes that the Mayor's declaration of a state of emergency, implementation of a city-wide curfew, restricted access to public transportation, and advisories not to attend the presidential inauguration, contributes to the District's collective prejudice. *Id.* at 4-5. However, as noted by the Court in *Skilling*, "[a]lthough widespread community impact necessitated careful identification and inspection of prospective jurors' connection" to the subject-matter of the litigation, "voir dire was 'well suited to that task.'" *Skilling*, 561 U.S. at 384. Again, while it may be true that many of the District's residents were, in some small way, impacted by the events of January 6, 2021, such attenuated connections are insufficient to support a presumption of prejudice. Of the 700,000 potential jurors residing in the District, their experiences surrounding the events of January 6, 2021 are unique and varied, and thus, an appropriate subject to inquiry during voir dire.

Oliveras’s third contention that “an overwhelming number of District of Columbia residents . . . voted for President Biden” again, while perhaps true, does not warrant a presumption of prejudice. Def.’s Mot. at 7. “A community’s voting patterns” are irrelevant to the consideration of a motion to transfer venue. *Haldeman*, 559 F.2d at 277, n. 43. (affirming the denial of a motion to transfer venue from the District of Columbia for a prosecution related to the Watergate political scandal during the Nixon administration when approximately eighty percent of District voters had voted for the Democratic Party’s candidate in the prior two elections). As noted by the court in *Haldeman*, any personal opinions, beliefs, or values which are attributable to a political affiliation and which might interfere with the juror’s ability to be impartial is a subject to be examined through voir dire. To hold that a membership in a certain political party, or voting for a certain political party’s candidates, is worthy of a presumption of prejudice would be dangerous and have far reaching implications. Doing so would effectively require that any democratic voter in a republican district, or republican voter in a democratic district would be entitled to a transfer of venue. This Court declines to take such a radical position.

Having considered and rejected Oliveras’s arguments, the first *Skilling* factor does not weigh in favor of transferring venue.

**2. The type of information contained in media reports surrounding the events of January 6<sup>th</sup> do not support a finding of prejudice.**

With regard to the second *Skilling* factor, the type of information included in media coverage, Oliveras argues that this factor weighs in favor of transfer because: (1) the language utilized in news coverage has been “especially charged and inflammatory;” (2) many media reports have been factually inaccurate; (3) the media coverage has been so pervasive within the District; and (4) the media has reported on the decisions and comments of judges on this Court. Def.’s Mot. at 10-12. As explained below, these arguments are without merit.

“[C]ourts have declined to transfer venue in some of the most high-profile prosecutions in recent American history.” See *In re Tsarnaev*, 780 F.2d 14, 15 (1st Cir. 2015) (declined to transfer venue from the District of Massachusetts for the accused Boston Marathon bomber); *United States v. Yousef*, 327 F.3d 56, 155 (2d Cir. 2003) (declined to transfer venue from the Southern District of New York for an accused accomplice in the 1993 terrorist attack on the World Trade Center); *United States v. Moussaoui*, 43 F. App’x 612, 613 (4th Cir. 2002) (declined to transfer venue from the Eastern District of Virginia for an accused accomplice in the September 11, 2001 terrorist attacks on the Pentagon building). “The mere existence of intense pretrial publicity is not enough to make a trial unfair, nor is the fact that potential jurors have been exposed to this publicity.” *United States v. Childress*, 58 F.3d 693, 706 (D.C. Cir. 1995).

Oliveras’s first contention that “[t]he language used in media coverage . . . has been especially charged and inflammatory,” does not warrant a presumption of prejudice. Def.’s Mot. at 10. As numerous courts have held, news stories that are “pervasive, adverse,” *Skilling*, 561 U.S. at 381-84, and “hostile in tone and accusatory in content,” *Haldeman*, 559 F.2d at 61, do not compel a presumption of prejudice. Oliveras has failed to identify with particularity any of the “vivid, unforgettable information” that the *Skilling* court considered as “particularly likely to produce prejudice” in the minds of potential jurors. *Skilling*, 561 U.S. at 384. Moreover, Oliveras has failed to identify any media coverage which has mentioned him by name or which has particularly identified and discussed his involvement in the January 6, 2021 events. See *Skilling*, 561 U.S. at 384, n. 17. (holding that “when publicity is about the event, rather than directed at the individual defendants, this may lessen any prejudicial impact.”) While it is certainly expected that news coverage of the January 6, 2021 events would be negative, such negativity does not rise to a level which compels a presumption of prejudice.

Oliveras's second contention that "much early reporting has since been shown to be factually inaccurate" does not warrant a presumption of prejudice. Def.'s Mot. at 11. To the extent that the information with which Oliveras is concerned is relevant to the proceeding, such facts will need to be borne out by the jury. However, to the extent that the facts with which Oliveras is concerned are not relevant to the proceeding, such as Officer Brian Sicknick's cause of death, such facts will not be introduced at trial for the jury's consideration. As with many of Oliveras's contentions, to the extent that these reporting inaccuracies would impair an individual juror's ability to remain impartial is a matter to be explored during voir dire.

Oliveras's third contention that the news coverage of the January 6, 2021 events in the District "is so substantial that it would be surprising to identify any potential jurors who have not been exposed to the coverage" does not warrant a presumption of prejudice. Def.'s Mot. at 11-12. As noted above, potential jurors need not be totally ignorant of the facts of a case, they only need to be able to put aside their preexisting perceptions and reach a verdict based upon the evidence alone. Further, much of the January 6, 2021 media coverage has been nationwide in scope and not limited to the District. Oliveras has failed to show how the national coverage of the January 6, 2021 events would have any lesser impact on the residents of the District of New Jersey.

Oliveras's fourth contention that "the media has widely reported comments of U.S. District Court Judges in this District regarding the events of January 6," does not warrant a presumption of prejudice. Def.'s Mot. at 12. However, like media coverage, comments made by political leaders and judges, while perhaps inadvisable, "contained no confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." *Skilling*, 561 U.S. at 382. To the extent that any potential jurors recall any

comments from Judges on this Court, this can be explored during voir dire to determine any prejudicial impact.

Having considered and rejected Oliveras's arguments, the second *Skilling* factor does not weigh in favor of transferring venue.

**3. The relationship between the media coverage and time since Oliveras's arrest and scheduled trial do not support a finding of prejudice.**

With regard to the third *Skilling* factor, the time period between the arrest and trial, as it relates to the media coverage, Oliveras argues that this factor weighs in favor of transfer because news coverage has remained high, despite the twenty-two months since the events of January 6, 2021. Def.'s Mot. at 13. As explained below, this argument is without merit.

"[P]retrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." *Neb. Press Ass'n*, 427 U.S. at 565. Over two years has passed since the events of January 6, 2021. It is true that Congressional hearings, midterm elections, and continued media coverage have kept the topic of January 6, 2021 fresh in the minds of citizens. However, as noted above, such events have been covered nationally, not localized to the District. Rather, Oliveras's own Exhibit support this conclusion by showing that media stories and news outlets have continued to decrease the amount of time and resources dedicated to covering the events of January 6, 2021. As noted by *Skilling*, a reduced "decibel level of media attention" is a factor demonstrating a reduced likelihood of juror prejudice. At most, other judges in this District considering this factor have held it as being in equipoise.

In considering Oliveras's argument, the third *Skilling* factor is in equipoise.

When weighing the three *Skilling* factors, none favor transferring venue to the District of New Jersey. Because Oliveras has failed to demonstrate a presumption of prejudice on the part of potential District jurors, his motion to transfer venue “for prejudice” is denied.

“‘[A]dequate voir dire to identify unqualified jurors’ is the primary safeguard against jury prejudice.” *United States v. Ballenger*, No. 21-719 (JEB), 2022 WL 16533872, at \*1 (D.D.C. Oct. 28, 2022) (quoting *Morgan v. Illinois*, 504 U.S. 719, 729 (1992)). Therefore, courts are given “ample discretion in determining how best to conduct [] voir dire,” *Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981), including the “mode and manner of [the] proceeding” and “the range of questions to be asked to prospective jurors,” *United States v. Robinson*, 475 F.2d 376, 380 (D.C. Cir. 1973). If, as Oliveras suggests, the venire has become so prejudiced against the defendant that “an impartial jury actually cannot be selected, that fact should become evident at the voir dire.” *United States v. Haldeman*, 559 F.2d 31, 63 (D.C. Cir. 1976).

At this stage of the proceeding, Oliveras has failed to demonstrate the existence of prejudice which would require transfer under Fed. R. Crim. P. 21(a). However, pursuant to his Sixth Amendment rights, Oliveras will be granted a full and fair opportunity to expose any bias or prejudice on the part of the veniremen through voir dire.

## Applicant Details

First Name **Emily**  
 Last Name **DuChene**  
 Citizenship Status **U. S. Citizen**  
 Email Address [emduch@umich.edu](mailto:emduch@umich.edu)  
 Address

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**Street**  
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**City**  
**Hampton**  
**State/Territory**  
**New Hampshire**  
**Zip**  
**03842**  
**Country**  
**United States**

Contact Phone Number **9783873994**

## Applicant Education

BA/BS From **University of Michigan-Ann Arbor**  
 Date of BA/BS **May 2019**  
 JD/LLB From **The University of Michigan Law School**  
<http://www.law.umich.edu/currentstudents/careerservices>  
 Date of JD/LLB **May 6, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **University of Michigan Journal of Law Reform**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Henry M. Campbell Moot Court**

## Bar Admission

## Prior Judicial Experience



Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

**Specialized Work Experience**

**Recommenders**

McQuade, Barbara  
bmcquade@umich.edu  
734-763-3813  
Fasman, Zachary  
zfasman@umich.edu  
Kalil, Danielle  
dkalil@umich.edu  
Logue, Kyle  
klogue@umich.edu  
734-936-2207

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers for the 2024-2025 term. I am a rising third-year law student at the University of Michigan Law School. I am spending the summer working in the New York City office of Debevoise & Plimpton. My older sister and her husband live in Virginia, and I would relish the opportunity to begin my legal career in the state close to family.

Last summer, I interned in the U.S. District Court in D.C. with Magistrate Judge Zia M. Faruqi. Through this experience, I strengthened my legal research and writing skills and confirmed my desire to pursue a career as a litigator. I drafted legal memoranda regarding Social Security Benefits and FOIA requests, observed Judge Faruqi during court proceedings, and learned how to work effectively on a team in a fast-paced legal environment. I was able to translate the skills I developed during this internship into a brief that I wrote and argued in front of a panel of judges during my law school's moot court competition. As a law clerk, I hope to continue developing my legal skills and contribute to your chambers in a unique and meaningful way.

Before law school, I worked for two years with Teach for America as a 7th grade English teacher in an underserved Brooklyn community. I learned how to distill complex information in a simple way for a large audience and how to think on my feet while presenting. As a teacher in a global pandemic, I also learned how to lead in the face of uncertainty and how to keep students and their families engaged in an entirely virtual environment to ensure positive outcomes. These skills have proven invaluable as a law student when working on complex cases with other student attorneys in the Human Trafficking Clinic. I was able to work with my client from a place of empathy and understanding, while fighting hard to meet the needs of the case and being creative when faced with obstacles. As a law clerk in your chambers, I am excited and confident in my ability to apply these skills to the fast-paced and demanding environment of the courthouse.

I have uploaded my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following professors are also attached:

- Professor Zachary Fasman: zfasman@umich.edu, 917-562-3570
- Professor Kyle Logue: klogue@umich.edu, 734-936-2207
- Professor Barbara McQuade: bmcquade@umich.edu, 734-763-3813
- Professor Danielle Kalil: dkalil@umich.edu, 734-615-3600

Thank you for your time and consideration.

Sincerely,

Emily DuChene

## Emily DuChene

11 Hunter Drive, Hampton, NH 03842  
(978) 387-3994 • emduch@umich.edu  
She/Her/Hers

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

*Juris Doctor* GPA: 3.812

Ann Arbor, MI

Expected May 2024

Journal: *Michigan Journal of Law Reform*, Articles Editor

Activities: If/When/How – *Former Treasurer*, Campbell Moot Court Competition – *Competitor*, Street Law – *Former 1L Representative*, Outlaws – *Member*, Women in Law Society – *Member*

#### RELAY GRADUATE SCHOOL OF EDUCATION

*Master of Arts*, Teaching

New York, NY

June 2021

Honors: Distinction, Dean's List, Academic Honors

#### UNIVERSITY OF MICHIGAN

*Bachelor of Arts* in Political Science & Psychology, Minor in Judaic Studies

Ann Arbor, MI

May 2019

Honors: Phi Beta Kappa, James B. Angell Scholar, University Honors

Activities: Michigan in Washington, Kappa Alpha Pi Prelaw Fraternity, WeRead Volunteer, Delta Gamma

### EXPERIENCE

#### DEBEVOISE & PLIMPTON LLP

*Summer Associate*

New York, NY

May 2023 – Present

#### HUMAN TRAFFICKING CLINIC, UNIVERSITY OF MICHIGAN LAW SCHOOL

*Student Attorney*

Ann Arbor, MI

January 2023 – Present

- Research and write memoranda regarding U-Visas, T-Visas, and Green Card applications.
- Assist clients with Green Card application process, including compiling documentation, writing affidavits, and communicating with caseworkers and other professionals.
- Devise strategies to assist a client who resides out of state and speaks a language other than English.

#### U.S. DISTRICT COURT MAGISTRATE JUDGE ZIA M. FARUQUI

*Judicial Intern*

Washington, D.C.

May 2022 – July 2022

- Researched and drafted legal memoranda and draft opinions about Social Security disability benefits.
- Prepared draft Report and Recommendation for review by Federal Judge.
- Observed court proceedings and discussed case strategy with Judge Faruqui and law clerks regarding criminal and civil cases.

#### EXCEED UPPER CHARTER SCHOOL

*7<sup>th</sup> Grade English Language Arts Teacher*

Brooklyn, NY

August 2019 – June 2021

- Designed and taught interactive, learner-focused lesson plans aligned with New York state standards.
- Increased students' reading and comprehension skills by adapting lessons to meet students' needs, using data to identify gaps, and re-teaching materials tailored to students' misconceptions.
- Led and participated in weekly training and coaching sessions to practice pedagogical skills and receive feedback, using that feedback to hone teaching methods further.

#### TEACH FOR AMERICA

*Corps Member*

New York, NY

June 2019 – June 2021

### ADDITIONAL

**Interests:** Scuba (PADI certified), dachshunds, watching each year's Oscar-nominated movies



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Issue Date: 06/05/2023

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: DuChene, Emily C

Student#: 88381211



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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### Fall 2021 (August 30, 2021 To December 17, 2021)

LAW	510	003	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	A-
LAW	530	002	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	A
LAW	580	003	Torts	Kyle Logue	4.00	4.00	4.00	A-
LAW	593	009	Legal Practice Skills I	Jessica Lefort	2.00		2.00	S
LAW	598	009	Legal Pract:Writing & Analysis	Jessica Lefort	1.00		1.00	S

<b>Term Total</b>				<b>GPA: 3.800</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.800</b>		<b>12.00</b>	<b>15.00</b>	

### Winter 2022 (January 12, 2022 To May 05, 2022)

LAW	520	003	Contracts	Kristina Daugirdas	4.00	4.00	4.00	A-
LAW	540	003	Introduction to Constitutional Law	Don Herzog	4.00	4.00	4.00	B+
LAW	594	009	Legal Practice Skills II	Jessica Lefort	2.00		2.00	S
LAW	673	001	Family Law	Tracy Van den Bergh	3.00	3.00	3.00	A

<b>Term Total</b>				<b>GPA: 3.636</b>	<b>13.00</b>	<b>11.00</b>	<b>13.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.721</b>		<b>23.00</b>	<b>28.00</b>	

### Fall 2022 (August 29, 2022 To December 16, 2022)

LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	A-
LAW	612	002	Alternative Dispute Resolution	Allyn Kantor	3.00	3.00	3.00	A
LAW	653	001	Employment Discrimination	Zachary Fasman	4.00	4.00	4.00	A
LAW	858	001	Legal Risk Management	Teresa Sebastian	2.00	2.00	2.00	A-
LAW	900	393	Research	Patrick Barry	1.00		1.00	S

<b>Term Total</b>				<b>GPA: 3.861</b>	<b>14.00</b>	<b>13.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.772</b>		<b>36.00</b>	<b>42.00</b>	

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Issue Date: 06/05/2023

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The University of Michigan Law School  
Cumulative Grade Report and Academic Record

Name: DuChene, Emily C  
Student#: 88381211



*Paul R. Peterson*  
University Registrar

		Credit					
		Course	Section	Load	Graded	Towards	
Subject	Number	Number	Course Title	Instructor	Hours	Hours	Program Grade
Winter 2023 (January 11, 2023 To May 04, 2023)							
LAW	669	002	Evidence	Len Niehoff	4.00	4.00	4.00 A-
LAW	797	002	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00 A
LAW	951	001	Human Trafficking Clinic + Lab	Bridgette Carr	4.00	4.00	4.00 A
				Chavi Nana			
				Courtney Petersen			
				Danielle Kalil			
LAW	954	001	Human Trafficking Cln+Lab Sem	Bridgette Carr	3.00	3.00	3.00 A
				Chavi Nana			
				Courtney Petersen			
				Danielle Kalil			
LAW	999	319	Directed Reading	Stephen Sanders	1.00	1.00	1.00 S
Term Total				GPA: 3.914	15.00	14.00	15.00
Cumulative Total				GPA: 3.812	50.00	57.00	

Fall 2023 (August 28, 2023 To December 15, 2023)

Elections as of: 06/05/2023

LAW	617	001	Anatomy of a Commercial Trial	Norman Ankers	3.00		
LAW	675	001	Federal Antitrust	Daniel Crane	3.00		
LAW	681	001	First Amendment	Don Herzog	4.00		
LAW	742	001	Film Law	Paul Szynol	3.00		
LAW	810	001	Corp Social Resp: Reg&Crim App	Chavi Nana	2.00		

End of Transcript  
Total Number of Pages 2

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Academic Transcript of: DUCHENE, EMILY C  
STUDENT NAME

88381211

STUDENT ID NUMBER

E197013701-1

CONTROL NUMBER

11-Jun-2023

DATE ISSUED

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STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382



*Paul R. Johnson*  
University Registrar

UNIVERSITY OF MICHIGAN DEGREES AWARDED

School/College: Literature, Sci, and the Arts

Major: Psychology

Major: Political Science

Minor: Judaic Studies

Degree: Bachelor of Arts, With High Distinction

Awarded: 02-MAY-2019

Winter 2016

		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
COMM	101	Mass Media	A	4.00	4.00	4.00	16.00
POLSCI	101	Intro Pol Thry	A-	4.00	4.00	4.00	14.80
PSYCH	250	Intro Dev Psych	A+	4.00	4.00	4.00	16.00
WOMENSTD	240	Int Womn Std	A+	4.00	4.00	4.00	16.00
<b>Term Total</b>					<b>GPA: 3.925</b>	<b>16.00</b>	<b>16.00</b>

Fall 2016

		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
JUDAIC	256	Israeli Lit-Culture	A	3.00	3.00	3.00	12.00
PSYCH	220	Intro Biopsych	A	4.00	4.00	4.00	16.00
SOC	100	Intro to Sociology	A	4.00	4.00	4.00	16.00
STATS	250	Intr-Stat&Data Anlys	B+	4.00	4.00	4.00	13.20
<b>Term Total</b>					<b>GPA: 3.813</b>	<b>15.00</b>	<b>15.00</b>

NON-UNIVERSITY OF MICHIGAN ACADEMIC EXPERIENCE

ADVANCED PLACEMENT AND EXAMINATION CREDIT

CREDITS

ENGLISH	101X	Departmental	3.00
HISTORY	101X	Departmental	4.00
PSYCH	111	Intro Psych	4.00
SPANISH	279X	Departmental	3.00

Winter 2017

		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
EARTH	114	Global Warming	A+	1.00	1.00	1.00	4.00
JUDAIC	210	Sources/Jewish Hist	A+	3.00	3.00	3.00	12.00
POLSCI	140	Int Compar Pol	A	4.00	4.00	4.00	16.00
PSYCH	290	Intro Persn Soc Cont	A	4.00	4.00	4.00	16.00
SOC	447	Soc of Gender	A	3.00	3.00	3.00	12.00
<b>Term Total</b>					<b>GPA: 4.000</b>	<b>15.00</b>	<b>15.00</b>

BEGINNING OF UNDERGRADUATE RECORD

Transfer Course Credit Accepted towards

MSH CTP MHP

Undergraduate LSA 0.00 14.00 0.00

Fall 2017

		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
JUDAIC	386	The Holocaust	A+	4.00	4.00	4.00	16.00
POLSCI	353	Arab-Israeli	A+	4.00	4.00	4.00	16.00
PSYCH	211	Project Outreach	A	3.00	3.00	3.00	12.00
		Juvenile and Criminal Justice					
PSYCH	356	Educational Psych	A+	4.00	4.00	4.00	16.00
<b>Term Total</b>					<b>GPA: 4.000</b>	<b>15.00</b>	<b>15.00</b>

		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
BIOLOGY	130	Animal Behav	A	4.00	4.00	4.00	16.00
EARTH	104	Ice Ages	A+	1.00	1.00	1.00	4.00
EARTH	107	Vol&Earthquake	A	1.00	1.00	1.00	4.00
ENGLISH	125	Writing&Academic Inq	A	4.00	4.00	4.00	16.00
JUDAIC	277	Lnd Israel-Palestine	A	4.00	4.00	4.00	16.00
<b>Term Total</b>					<b>GPA: 4.000</b>	<b>14.00</b>	<b>14.00</b>

Continued next page >

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Academic Transcript of: DUCHENE, EMILY C  
STUDENT NAME

88381211  
STUDENT ID NUMBER

E197013701-1  
CONTROL NUMBER

11-Jun-2023  
DATE ISSUED

Page 2

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STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382



*Paul R. Johnson*  
University Registrar

Winter 2018	Undergraduate LSA	Grade	Hours	MSH	CTP	MHP	UNDERGRADUATE REMARKS
POLSCI 392	MIW Prep Seminar	CR	2.00	0.00	2.00	0.00	23-Dec-2015 University Honors
POLSCI 393	Inside Washington DC	CR	1.00	0.00	1.00	0.00	20-Mar-2016 William J. Branstrom Freshman Prize
POLSCI 398	Wash Internship	CR	2.00	0.00	2.00	0.00	28-Apr-2016 University Honors
POLSCI 411	Nat Capital Research	A	4.00	4.00	4.00	16.00	22-Dec-2016 University Honors
POLSCI 492	Direct Studies	A-	3.00	3.00	3.00	11.10	19-Mar-2017 James B. Angell Scholar
Term Total	GPA: 3.871		12.00	7.00	12.00	27.10	27-Apr-2017 University Honors

Fall 2018	Undergraduate LSA	Grade	Hours	MSH	CTP	MHP	UNDERGRADUATE REMARKS
POLSCI 320	Amer Chief Exec	A	4.00	4.00	4.00	16.00	18-Mar-2018 James B. Angell Scholar
POLSCI 369	Intl Econ Rel	A	4.00	4.00	4.00	16.00	25-Mar-2018 Phi Kappa Phi
POLSCI 421	Law and Gender	A	3.00	3.00	3.00	12.00	20-Dec-2018 University Honors
PSYCH 351	Lab-Developmntl	A	3.00	3.00	3.00	12.00	24-Mar-2019 James B. Angell Scholar
PSYCH 488	Soc of Deviance	A	4.00	4.00	4.00	16.00	07-Apr-2019 Phi Beta Kappa
Term Total	GPA: 4.000		18.00	18.00	18.00	72.00	

END OF UNDERGRADUATE RECORD

Winter 2019	Undergraduate LSA	Grade	Hours	MSH	CTP	MHP	UNDERGRADUATE REMARKS
POLSCI 389	Topics	A-	3.00	3.00	3.00	11.10	End of Transcript
	The Presidency: Cases and Controversies						Total Number of Pages 2
PSYCH 314	Positive Psychology	A	3.00	3.00	3.00	12.00	
PSYCH 401	Special Problems	A+	3.00	3.00	3.00	12.00	
	Introduction to Forensic Psychology						
Term Total	GPA: 3.900		9.00	9.00	9.00	35.10	

Undergraduate LSA							
Cumulative Total	GPA: 3.946		109.00	128.00	430.20		

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**UNIVERSITY OF MICHIGAN LAW SCHOOL  
625 South State Street  
Ann Arbor, Michigan 48109**

Barbara L. McQuade  
Professor from Practice

June 07, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Emily DuChene for a clerkship in your chambers. Emily recently completed her second year at Michigan Law School, where she serves as articles editor for the Michigan Journal of Law Reform. Emily is a former teacher who wants to continue her public service as a litigator. Her teaching experience gives her a rare combination of empathy and toughness that will make her an excellent lawyer.

I had the pleasure of getting to know Emily as a student in my first year Criminal Law class. Emily's performance in that class was impressive, earning one of only a few A's awarded in the course. She consistently showed a deep understanding of the concepts and a fluid ability to analyze legal problems. Emily is a strong writer who can clearly dissect legal issues.

Last summer, Emily interned in the chambers of a U.S. magistrate judge in Washington D.C., an experience that gave her an understanding of the work of a court and inspired her to serve as a law clerk. Before coming to law school, Emily earned a Master's Degree in teaching and worked as a seventh grade language arts teacher at an under-resourced public school in Brooklyn. Teaching in that environment provided Emily with the kind of humility and resilience that will help her excel as a lawyer.

I previously served as U.S. Attorney for the Eastern District of Michigan. In that role, I had the opportunity to hire more than 60 lawyers, and Emily has the kinds of qualities that I would look for in a new hire. She is smart, she works well with others, and she can communicate effectively. These qualities will make Emily a valuable resource as a law clerk.

I know from my own experience as a law clerk that a judge's chambers can be like a family, so it is important to bring in clerks who will add value, respect confidences, and perform every task with enthusiasm and excellence. I think Emily will thrive in this setting. She has the intellectual horsepower to capably handle the work and she will be a delightful addition to the workplace.

For all of these reasons, I enthusiastically recommend Emily DuChene for a clerkship in your chambers. Please let me know if I can provide any additional information.

Sincerely,

Barbara L. McQuade

Barbara McQuade - bmcquade@umich.edu - 734-763-3813



UNIVERSITY OF MICHIGAN LAW  
625 South State Street  
Ann Arbor, MI 48109

Zachary D. Fasman  
Lecturer  
zfasman@umich.edu  
(917) 562-3570

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to write on behalf of Emily Duchene, a forthcoming May 2024 graduate of Michigan Law who is applying for a clerkship in your chambers. Emily is an outstanding person who is among our very best students. She has received straight A's in Law School with the exception of one B+, and this was also the case in her undergraduate work at Michigan, where she had a 3.96 GPA. She is an Articles Editor of the Michigan Journal of Law Reform and a gifted student.

Emily was in my Employment Discrimination Law class in the fall 2022 semester, a 4-credit course with extensive readings in a rapidly developing field. Emily was engaged throughout, always completely prepared, offered thoughtful and insightful comments in class on difficult issues and of course wrote an excellent final exam. I spent a good deal of time with Emily during office hours, after class and before the final examination, when she and a classmate and I spent several hours going over some of the more difficult areas in the law. Throughout our discussions Emily demonstrated a clear understanding of employment discrimination and showed an ability to grasp challenging concepts well beyond her years.

If I were a judge, Emily is precisely the person whom I would be looking to hire. I write enthusiastically on her behalf because of her intellect, energy, good judgment, and respect for documentation and the craft of our profession. She combines these qualities with a warm, engaging personality.

She deserves an excellent clerkship and I very much hope you will hire her.

If you wish to discuss Emily's file, please do not hesitate to contact me.

Sincerely,

Zachary Fasman

Zachary Fasman - zfasman@umich.edu

June 09, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

RE: Recommendation for Emily DuChene

Dear Judge Walker:

As a professor in the Human Trafficking Clinic + Lab (HTC+L) at the University of Michigan Law School, I supervised Emily's work from January to May 2023. I had the opportunity to observe her performance each week in seminar classes, weekly supervision, and many informal contacts. As a student attorney in the HTC+L, Emily's work encompassed direct client representation and systemic reform work. I supervised her client work, which consistently exhibited professionalism, self-direction, organization, and strong research and writing. I have no doubt Emily would be a valuable addition to your chambers and highly recommend her for a clerkship.

Emily's strong research and analytical skills allowed her to grasp complicated legal concepts quickly. Emily's casework was focused primarily on immigration. Although she entered the clinic with limited knowledge of immigration law, her thorough research and strong work ethic allowed her to quickly learn the complexities and distill them in a way that was easy for a client to understand. For example, she had to answer a question about whether her client's conduct would bar her from eligibility for immigration status. This question was both factually and legally complex. Emily quickly got up to speed on the legal framework through independent research and engaged in thorough fact investigation to apply the facts to the law. She then used this research to guide her legal analysis and case strategy.

Emily's caseload required her to engage in various types of legal writing with strong attention to detail. This included drafting legal arguments detailing why her client was eligible for immigration relief and drafting an affidavit in her clients' voice that effectively conveyed her trafficking and immigration history. It also included memoranda to me about the results of her research as well as client letters clearly outlining legal options and next steps. Emily's writing was methodical, concise, well-structured, well-supported, and tailored to her audience.

Emily's attention to detail extended beyond her writing. She is extremely organized and excelled at case management but also exhibited flexibility. At the start of the semester, she researched every task that would need to be accomplished in her casework and created a detailed case plan, including a calendar for the remainder of the semester. She used this case plan to keep her work on track. However, when a client was unresponsive, delaying the timeline, Emily was able to revise and come up with a new plan without skipping a beat. In addition, Emily kept excellent records, maintained meticulous case files, and complied with all clinic policies and protocols.

Apparent in Emily's work was an ability to take initiative and solve problems effectively. She prepared thoroughly for each task. When she encountered an obstacle or question, Emily would not simply ask me what she should do. Rather, she would engage in independent research to understand the problem and identify solutions. She would then approach me with an explanation of the pros and cons of each option identified. She identified and asked good questions, but she was highly competent and able to work independently. She used my time and my knowledge as her supervisor effectively and efficiently.

Emily demonstrated professionalism and skilled communication. She represented a client with significant trauma who posed challenges with respect to client management and professional responsibility. This client was at times hostile and presented challenges even for me as a seasoned attorney. Emily engaged with this client with compassion, clarity, and creative problem solving. As with all her work, she approached communication with this client in a deliberate and thoughtful manner, going to great lengths to provide them with high quality legal representation. She tried to engage with the client in many different ways to see what would work best, even seeking ideas from classmates on how to approach the issue. Her client work also required her to communicate with other professionals, including court staff, case workers, and service providers. In all of her communication, she was clear, courteous, and had a good instinct for tailoring her message in a way her audience would understand.

Finally, Emily is a strong collaborator and a pleasure to work with. The HTC+L is very collaborative in nature and requires students to work not only with other law students but also with graduate students from other disciplines across the university. Emily and her casework partner did not know each other prior to clinic but quickly developed a great working relationship throughout the semester. This was due in part to Emily setting clear expectations, communicating regularly and respectfully with her partner, and contributing eagerly and equally to their workload. She regularly made meaningful contributions in our class sessions and was excited to help classmates work through challenges in their cases. Finally, Emily is personable and easy to get along with, and I looked forward to our interactions. She would be a joy to have in any office.

For all of these reasons, I believe Emily would make a valuable contribution to your chambers and recommend her to you without hesitation. Thank you for your time, and please feel free to contact my office with any questions about Emily.

Sincerely,

Danielle Kalil - [dkalil@umich.edu](mailto:dkalil@umich.edu)

Danielle Kalil  
Visiting Clinical Assistant Professor

Danielle Kalil - [dkalil@umich.edu](mailto:dkalil@umich.edu)

UNIVERSITY OF MICHIGAN LAW SCHOOL  
625 South State Street  
Ann Arbor, Michigan 48109

Kyle D. Logue  
Douglas A. Kahn Collegiate Professor of Law

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Emily Duchene, a second-year student at the University of Michigan Law School who is applying for a clerkship in your chambers. I am confident that Emily will be a fantastic law clerk. She is incredibly smart, has unlimited energy, and a contagious enthusiasm for the law.

Emily was a student in my torts class in the fall 2021 term, and, judging by her in-class participation and performance on the exam, she was easily among the two or three best students in that class. She was one of those front-row law students who devours everything the professor throws at her. On the first day of class she was the first student to be called on, and she set the tone for everyone else for the rest of the semester. She showed confidence, intelligence, good humor, and an extraordinary level of preparation. She kept this up for the rest of the semester as well. There was no one in that classroom who did more to contribute to the high level discussion that took place.

Her performance on the exam was also exceptional. Law school exams are designed to test not only knowledge of the material, but also the ability to write clearly and argue in a persuasive but balanced way for a particular legal position, citing the relevant authorities where appropriate and distinguishing the important cases that might seem to apply but don't. Emily's exam excelled along all of these dimensions. Her answers were sharp, and written in crystal clear prose. Her knowledge of the case law was exhaustive and subtle, which made it possible for her to apply the law to the facts in the questions with exceptional skill. Very few law students, even at Michigan, have Emily's analytical skills. It does not surprise me that her grade point average puts her among the best students in her law school class.

Emily's ability to excel in the classroom is made more impressive by the fact that she seems to be involved in every activity on campus. From her leadership position on the Michigan Journal of Law Reform (where she has the prestigious job of Articles Editor) to her active engagement in numerous student organizations (Street Law, Outlaw Women in Law Society), she has her hand (and often a leadership role) in a range of important work taking place on campus. All the while, she has been able to maintain a high level of academic excellence. This combination of accomplishment and involvement has been characteristic of her entire academic career—from her grad school days at the Relay Graduate School of Education to her undergrad career at the University of Michigan, where she was not only Phi Beta Kappa, but deeply involved in a panoply of campus activities. If there was any doubt about her commitment to hard work, notice that she was a corps member for Teach for America. I have had dozens of students who were involved in that program; all of them came away with a respect for the importance of working hard, even in difficult circumstances.

Finally, I would be negligent if I did not highlight Emily's sunny, cheerful personality. She is simply a pleasure to be around. She brightened our torts class with her wry, self-deprecating sense of humor, traits that seem to have made her very popular with, and respected by, all of her classmates.

In sum, Emily Duchene is almost an ideal clerkship candidate. There is literally no downside, and she has the potential to be one of your very best. If you have any questions about her, feel free to reach out to me by email or phone.

Sincerely yours,

Kyle Logue  
Douglas A. Kahn Collegiate Professor of Law  
T: 734.936.2207  
klogue@umich.edu

Kyle Logue - klogue@umich.edu - 734-936-2207

**Emily DuChene**

11 Hunter Drive, Hampton, NH 03842  
(978) 387-3994 • emduch@umich.edu  
She/Her/Hers

**WRITING SAMPLE #1**

The below writing sample is part of a brief written for the Fall 2022 University of Michigan Campbell Moot Court Competition. The beginning portion below is the statement of facts for the problem. And the argument that follows addresses the question of whether a dual-layer removal scheme for administrative law judges and Merit Systems Protection Board members violates the separation-of-powers doctrine. I was assigned the position I argued by the Campbell Moot Court Competition Board. This writing sample was lightly edited by my Campbell Moot Court partner who wrote the other half of the brief (not included below).

## STATEMENT OF THE CASE

The 2008 financial crisis devastated the United States. Outdated and unenforced rules governing the financial sector allowed some to abuse the system at the expense of endangering the economy, eradicating trillions in wealth, and leaving millions of Americans without jobs. Congress reacted by passing the Dodd-Frank Act (also known as the Consumer Financial Protection Act of 2010 (“CFPA”)), which, among other things, prohibits unfair, deceptive, or abusive acts and practices in the consumer-finance sector (“UDAAP”). 12 U.S.C. § 5536(a)(1)(B).

The CFPA also created the Consumer Financial Protection Bureau (“CFPB”), an independent regulatory agency tasked with enforcing federal consumer protection statutes that govern home financing, student loans, credit cards, and banking practices. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 112-203, 124 Stat. 1376 (2010). The CFPB is empowered to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, sue in federal court, and issue binding and enforceable decisions in administrative proceedings. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2193 (2020); *see also* §§ 5563-5564. The CFPB can seek restitution, disgorgement, injunctive relief, and civil penalties to remedy violations. §§ 5565(a); (c)(2).

The CFPB is required to adjudicate claims in accordance with the Administrative Procedure Act (“APA”). 5 U.S.C. § 5563(a). Administrative law judges (“ALJs”) appointed under the APA are removable only for good cause “established and determined by the Merit Systems Protection Board” (“MSPB”). 5 U.S.C. § 7521(a). Members of the MSPB themselves may only be removed by the President for “inefficiency, neglect of duty, or malfeasance in office.” 5 U.S.C. § 1202(d). The statutory scheme insulates the CFPB’s ALJs from removal by the President at two distinct stages: (1) ALJs are removable only upon a finding by the MSPB of “good cause”; and (2) members of the MSPB are removable by the President only for inefficiency, neglect, or

malfeasance. *H.B. Sutherland Bank, N.A. v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 4 (12th Cir. 2022).<sup>1</sup>

In 2019, the CFPB brought an adjudication proceeding against H.B. Sutherland Bank, N.A. (“Sutherland” or “the Bank”) seeking civil penalties. In early 2020, the ALJ assigned to the matter issued a Recommended Decision, finding for the Bureau on each allegation and ordering that all sought relief be granted. The Bank appealed. In early 2021, the Director of the CFPB issued their Final Order, largely adopting the ALJ’s Recommended Decision. The Director also issued an order denying the defendant’s motion for a stay. The Bank filed a petition in the Court of Appeals seeking to set aside the Director’s order pursuant to 12 U.S.C. § 5563. The Court of Appeals ruled for the Respondent and denied the Bank’s petition for review. Petitioner then filed a writ of certiorari to the Supreme Court of the United States, which was granted.

Agency adjudication and assessment of a civil penalty under the CFPA do not implicate the Seventh Amendment right to a jury trial because the CFPA falls squarely within the public rights exception. Even in the absence of this exception, the claims arising from the CFPA still are not entitled to this right because the CFPA is not analogous to a common law claim or remedy as they existed when the Seventh Amendment was ratified.

The dual-layer removal scheme also does not violate the Constitution because ALJs serve an adjudicatory role that does not impede the President’s ability to perform his constitutional duties. The scheme’s constitutionality is supported by due process concerns and legislative history.

---

<sup>1</sup> These citations come from the mock opinion included in the competition materials.

**A. The Dual-Layer Removal Scheme Does Not Violate the Constitution.**

**A. ALJs serve an adjudicatory role and thus the dual-cause removal system does not violate the separation of powers.**

A statutory scheme with two layers of removal protections on ALJs does not violate the Constitution because ALJs serve an adjudicatory function. The scope of their duties does not involve policymaking or encroach on the President’s ability to direct the activities of the executive branch. Thus, a dual-layer restriction on their removal does not violate the Constitution.

In *Humphrey’s Executor v. United States*, 295 U.S. 602, 632 (1935), this Court held that the President has unrestricted power to remove those whose roles were exclusively executive, but this power does not extend to government officials whose functions are legislative and/or judicial in nature. At issue in *Humphrey’s Executor* was whether the President had the power to remove a Federal Trade Commission (“FTC”) commissioner. *Id.* at 612. This Court held that he did not because an FTC commissioner’s functions are not purely executive in nature. *Id.* at 631-32. Rather, the FTC exercises quasi-legislative and quasi-judicial functions and thus must be free from executive control. *Id.* at 629-30. Congress has the authority to require such agencies to carry out their duties independent of executive control. *Id.*

Similarly, in *Morrison v. Olson*, 487 U.S. 654 (1988), this Court held that the President does not have the power to freely remove inferior officers. The Ethics in Government Act of 1978 permitted the judiciary to appoint independent counsel and gave the Attorney General sole removal power only for good cause. *Id.* at 660-61. Whether the President must have unfettered removal power depends on whether the officer is a “principal” or an “inferior” officer. *Id.* at 670-71. Because the Appointments Clause requires principal officers to be appointed by the President, they can also only be removed by the President. *Id.* And, because inferior officers can be appointed by the President, department heads, or the judiciary, they do not need to be removed by the President



and thus Congress is free to grant removal power to another branch of government. *Id.* at 673-74. This Court found that the independent counsel was an inferior officer because their powers were limited to investigation and prosecution, neither of which “impede the President’s ability to perform his constitutional duty.” *Id.* at 691.

The same rationales applied in *Humphrey’s Executor* and *Morrison* apply here. Exactly like the FTC commissioner in *Humphrey’s Executor* and the independent counsel in *Morrison*, the CFPB ALJs are not purely executive in nature. The scope of the CFPB’s power consists of conducting investigations, issuing subpoenas and civil investigative demands, initiating administrative adjudications, bringing suits to federal court, and issuing binding and enforceable decisions. *Seila Law LLC*, 140 S. Ct. at 2193. These adjudicatory powers are, similar to *Humphrey’s Executor*, quasi-judicial responsibilities and must be free from executive control. Additionally, similar to the independent counsel in *Morrison*, CFPB ALJs are inferior officers because their power is limited to investigation and prosecution and thus does not impede the President’s ability to perform his constitutional duties.

While this Court found the multi-level removal scheme in *Free Enterprise Fund v. Public Company Accounting Oversight Board* unconstitutional, our case is distinguishable. There, Congress enacted the Sarbanes-Oxley Act which created the Public Company Accounting Oversight Board (“PCAOB”) and tasked the Securities Exchange Commission with its oversight. *Free Enter. Fund v. Pub. Acct. Oversight Bd.*, 561 U.S. 477, 484 (2010). PCAOB members were insulated from Presidential control by two layers: PCAOB members could only be removed by the SEC for good cause, and similarly, SEC Commissioners could only be removed by the President for good cause. *Id.* at 486-87. This Court found this removal structure unconstitutional because the

PCAOB members were not accountable to the President, thereby interfering with the President's duty to ensure that the laws are faithfully executed. *Id.* at 484.

In *Duka v. SEC*, No. 15 Civ. 357, 2015 WL 5547463, at \*15 (S.D.N.Y. Sept. 17, 2015), the Southern District of New York held that *Free Enterprise Fund* did not create a "categorical rule forbidding two levels of 'good-cause' tenure protection." The court concluded that what matters when deciding the constitutionality of a removal system is not the number of layers of protection per se, but whether the removal scheme is structured as to "infringe" on the President's duty to ensure that the laws are faithfully executed. *Id.* at \*17.

Unlike the SEC Commissioners in *Free Enterprise Fund*, ALJs' responsibilities are solely adjudicatory in nature, and thus do not encroach on the President's responsibilities. This Court explicitly excluded ALJs from its *Free Enterprise Fund* holding because they "perform adjudicative rather than enforcement or policymaking functions" and "possess purely recommendatory powers." *Free Enter. Fund*, 561 U.S. at 507 n.10. The President's inability to remove CFPB ALJs is thus not so fundamental to the functioning of the executive branch as to require that they be terminable at will by the President. *Id.*

Thus, because the scope of an ALJs duty is solely adjudicatory in nature, the dual-cause removal restrictions do not infringe upon the President's authority to appoint executive officials and take care that the laws are faithfully executed.

**B. Due Process Concerns Support the Constitutionality of the Dual-Cause Removal Scheme.**

Due process concerns also support the constitutionality of dual-cause removal of ALJs. Too much presidential control over ALJs will generate due process concerns. This Court has recognized that direct presidential control over ALJs may not be required because of the need for impartial and independent agency adjudication. *Id.* at 506-07, 507 n.10.

Under the current system, ALJs are removable only for good cause “established and determined by the [MSPB], an independent, multimember federal agency.” 5 U.S.C. § 7521(a). Good cause determinations must be made “on the record and after opportunity for a hearing before the Board.” 5 C.F.R. § 930.211 (2022). Members of the MSPB themselves may only be removed by the President for “inefficiency, neglect of duty, or malfeasance in office.” 5 U.S.C. § 1202(d). The best reading of “good cause” excludes the ability to remove an ALJ on the Department Head’s recommendation for failure “to follow agency policies, procedures, or instructions.” *Sutherland*, 505 F.4th at 19 (citing Recent Guidance, 132 Harv. L. Rev. 1120, 1123 (2019)). Department Head’s ability to determine a “good cause” reason for firing an ALJ might create dangerous “executive control of the administrative state.” *Id.* (citing Recent Guidance, *supra*, at 1120-21)).

The CFPB Director maintains significant control over the administrative adjudication process. *See* 12 C.F.R. § 1081.405 (2022). Any findings that the ALJ makes are classified as “preliminary findings.” 12 C.F.R. § 1081.400 (2022). And, “[a]ny party may file exceptions to the preliminary findings and conclusions of the [ALJ],” 12 C.F.R. § 1081.402 (2022), which may then be appealed to the Director for a “final decision.” *Id.* §§ 1081.402, 1081.405. The Director has full discretion to modify or set aside any ALJ findings or conclusions, including those that bear on agency policy. *Sutherland*, 505 F. 4th at 19. The President’s power to remove the Director thus protects the President’s policy preferences. *See Seila Law*, 140 S.Ct. at 2204 (“[T]he Director may dictate and enforce policy for a vital segment of the economy affecting millions of Americans); *Free Enter. Fund*, 561 U.S. at 507 n.10 (distinguishing ALJs from PCAOB members because “many administrative law judges of course perform adjudicative rather than enforcement or policy making functions or possess purely recommendatory powers).

The dissenting judges in *Free Enterprise Fund* noted that Congress implemented ALJ tenure protections for the purpose of “impartial adjudication.” 561 U.S. at 522 (Breyer, J. dissenting). This concern is mitigated by the Director’s possession of full policymaking control over the CFPB’s adjudicative structure. *Sutherland*, 505 F.4<sup>th</sup> at 19. ALJs merely ensure that the hearings are conducted independent of untoward influence from the executive branch. *Id.* at 19.

Without the two layers of removal protection, the CFPB’s adjudicative structure will be subject to pressure from the executive branch. If ALJs lose one of their two layers of removal protection, there are two possible outcomes: (1) ALJs will become removable at-will by the MSPB; or (2) ALJs will retain their for-cause protections from the MSPB, but the President could remove the MSPB members at-will. Spencer Davenport, *Resolving ALJ Removal Protections Problem Following Lucia*, U. MICH. J.L. REFORM 693, 708 (2020). In either event, ALJs will be at risk of being “discharged at the whim or caprice of the agency or for political reasons.” *Id.* (quoting *Ramspeck v. Federal Trial Examiners Conf.*, 345 U.S. 128, 142 (1953)). This creates substantial due process concerns because the agency could now directly choose the ALJ, be parties in front of the ALJ, and then have the ability to remove the ALJ. *Id.* at 708. This jeopardizes the impartiality of the ALJs and the credibility and effectiveness of CFPB adjudication.

**B. Congressional intent supports the ALJ dual-layer for-cause restrictions on the President’s ability to remove ALJs.**

Legislative intent also supports the constitutionality of the dual-layer removal process. Congress passed the APA to ensure due process is upheld in administrative proceedings, which includes protecting the independence of ALJs. Richard E. Levy & Robert L. Glicksman, *Restoring ALJ Independence*, 105 MINN. L. REV. 39, 50 (2020); *see* 92 Cong. Rec. 2149 (1946).

More specifically, Congress believed ALJs should hold an independent status apart from the hiring and prosecuting agency. Thomas C. Rossidis, *Article II Complications Surrounding*

*SEC-Employed Administrative Law Judges*, 90 ST. JOHN’S L. REV. 773, 780 (2016) (citing 92 Cong. Rec. at 5655). Congress examined two proposals: (1) “the examiners should be entirely independent of agencies, even to the extent of being separately appointed”; or (2) “examiners [should] be selected from agency employees and function merely as clerks.” *Id.* (quoting 92 Cong. Rec. at 5655). The APA mandated the separation of an agency’s prosecutorial and adjudicatory functions and prohibited *ex parte* contacts during an adjudication. Levy & Glicksman, *Restoring ALJ Independence*, *supra*, at 50; *see* 5 U.S.C. § 554(d). The APA also subjected hearing examiners to civil service protections, including merit selection, good-cause requirements for adverse employment actions, and salary determination made independent of any agency performance evaluations. Congress intended for these protections to create distance between the MSPB and its ALJs to satisfy its independence concerns. Rossidis, *Article II Complications Surrounding SEC-Employed Administrative Law Judges*, *supra*, at 780.

The MSPB has been a core protection of independent administrative adjudication since the APA’s adoption. Levy & Glicksman, *Restoring ALJ Independence*, at 59. The MSPB has oversight over ALJs in the employment context and is tasked with upholding the “Merit System Principles” applicable to all federal employees. *Sutherland*, 505 F.4th, at 205; 5 U.S.C. § 2301. The “origins of the MSPB may be traced back more than a century, as part of efforts to curtail the practice of political patronage in the federal government,” Jon O. Shimabukuro & Jennifer A. Staman, Cong. Rsch. Serv. R45630, *Merit Systems Protection Board (MSPB): A Legal Overview 2* (2019). The MSPB operates to limit political patronage and influence in the federal employment system, a goal that is achieved by enforcing the Merit Systems Principles laid out in 5 U.S.C. § 2301(b). *Sutherland*, 505 F.4th at 20. Because the MSPB relates solely to the functions of the ALJ’s role,

“good cause” determinations do not involve policy decisions and thus presidential control is not necessary. *Id.* at 21.

### CONCLUSION

The United States cannot afford another financial crisis of the same magnitude as the financial crisis of 2008. Agency adjudication by the CFPB is essential to ensure the thrust of the CFPA is effectuated. Agency adjudication and assessment of civil penalties under the CFPA do not implicate the Seventh Amendment right to a jury trial because the CFPA falls squarely within the public rights exception. Even in the absence of this exception, the claims arising from the CFPA still are not entitled to this right because the CFPA is not analogous to a common law claim or remedy as it existed when the Seventh Amendment was ratified. The dual-layer removal scheme also does not violate the Constitution because ALJs serve an adjudicatory role that does not impede the President’s ability to perform his constitutional duties. The dual-layer removal scheme’s constitutionality is supported by due process concerns and legislative history.

**Applicant Details**

First Name **Korinne**  
Last Name **Dunn**  
Citizenship Status **U. S. Citizen**  
Email Address [korinned@pennlaw.upenn.edu](mailto:korinned@pennlaw.upenn.edu)  
Address

**Address****Street****1338 Chestnut St Apt 616****City****Philadelphia****State/Territory****Pennsylvania****Zip****19107****Country****United States**

Contact Phone Number **8123403768**

**Applicant Education**

BA/BS From **Indiana University-Bloomington**  
Date of BA/BS **May 2016**  
JD/LLB From **University of Pennsylvania Carey Law School**  
<https://www.law.upenn.edu/careers/>  
Date of JD/LLB **May 15, 2024**  
Class Rank **School does not rank**  
Law Review/Journal **Yes**  
Journal(s) **The Regulatory Review**  
Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
Externships **No**

Post-graduate Judicial Law Clerk **No**

### **Specialized Work Experience**

### **Recommenders**

Levick, Marsha  
mlevick@jlc.org  
215-625-0551

Davis, Michael  
michaeladavis888@gmail.com

Wilkinson-Ryan, Tess  
twilkins@law.upenn.edu  
215-746-3457

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



**Korinne A. Dunn**  
1338 Chestnut Street  
Philadelphia, PA 19107  
korinned@pennlaw.upenn.edu  
812-340-3768

June 8, 2023

The Honorable Jamar K. Walker  
Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to request your consideration of my application for a clerkship beginning in fall 2024. I am a third-year law student at the University of Pennsylvania Carey Law School.

As a former educator in an under-resourced middle school and previous legal intern with Juvenile Law Center, Education Law Center, and the Civil Rights Division of the U.S. Department of Justice, I am passionate about continuing to serve the public as a law clerk. I have developed writing, communication, and legal research skills through experience as a writing teacher and professional development facilitator, through legal internships that have required me to answer challenging research questions and present findings both in writing and orally, and through work as an associate editor with *The Regulatory Review*. I am continuing to develop direct representation skills this summer as an intern with Community Legal Services of Philadelphia.

I enclose my resume, transcript, and writing sample. Letters of recommendation from Professor Marsha Levick (mlevick@jlc.org, 267-257-0394), Professor Michael Davis (michaeladavis888@gmail.com, 610-505-6387), and Professor Tess Wilkinson-Ryan (twilkins@law.upenn.edu, 215-746-3457) are also included. Please let me know if any other information would be useful for your consideration. Thank you.

Respectfully,

Korinne A. Dunn

## Korinne Dunn

1338 Chestnut St, Apt 616 | Philadelphia, PA 19107 | (812) 340-3768 | korinned@pennlaw.upenn.edu

### EDUCATION

**University of Pennsylvania Carey Law School**, Philadelphia, PA

J.D. Candidate, May 2024

Dean's Scholar; William Henry Wilson Scholar

Associate Editor, *The Regulatory Review*

Member, Criminal Record Expungement Project

**University of Louisville**, Louisville, KY

Master of Arts in Teaching, May 2018

**Indiana University**, Bloomington, IN

B.A., Anthropology, *summa cum laude*, May 2016

*Honors*: Phi Beta Kappa, Executive Dean's List, Founder's Scholar, National Society for

Linguistic Anthropology Undergraduate Paper Prize

### EXPERIENCE

**Community Legal Services**, Philadelphia, PA

May 2023–August 2024

*Summer Intern*

**Special Litigation Section, Civil Rights Division, DOJ**, Washington, DC

January 2023–May 2023

*Spring Extern*

- Served on Police Practice Group case team at investigation stage. Contributed to Corrections and Juvenile Practice Groups. Researched issues related to homelessness, disability, and discrimination.

**Education Law Center**, Philadelphia, PA

September 2022–December 2022

*Fall Extern*

- Researched enforceability of settlement terms for class action. Researched the application of disability education law to students languishing in residential settings. Conducted client intake.

**Juvenile Law Center**, Philadelphia, PA

June 2022–August 2022

*Summer Intern*

- Prepared for and observed depositions in class action against high-profile youth detention center. Researched immunity in class action against state parole board. Researched trends on youth transfer.

**Jefferson County Public Schools**, Louisville, KY

July 2016–May 2021

*Teacher, Middle Grades English Language Arts*

- Created and implemented curriculum in literacy and writing for 7<sup>th</sup> and 8<sup>th</sup> graders
- Committees/boards*: Professional Learning Community Lead, 2020–2021; Jefferson County Teachers Association (JCTA) Representative, 2018–2021; National Seeking Educational Equity and Diversity Project, 2018–2020; Racial Equity Team, 2017–2021; Student LGBTQ+ Club Sponsor, 2019–2021.

**Adolescent Literacy Project**, Louisville, KY

May 2020–April 2021

*Program Co-Facilitator*

- Developed and facilitated English Language Arts professional development.

**Bhutanese American Hindu Society**, Louisville, KY

July 2016–May 2020

*Volunteer Grant Drafter, English Language Support*

**Kentucky Refugee Ministries**, Louisville, KY

August 2017–December 2019

*Volunteer, English Language Tutor*

**New Leaf-New Life**, Bloomington, IN

July 2015–December 2017

*Volunteer, Program Co-Facilitator*

- Facilitated workshops in argument for incarcerated individuals. Assisted formerly incarcerated clients with resume building, job searches, and community resources.

**Korinne Dunn**  
**UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL**

**Spring 2023**

Note: I will provide an updated transcript on or after June 12.

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Labor Law	Sean Burke	A	3
National Security Law	Claire Finkelstein	A	3
Law Reform Litigation	Mark Aronchick	A	1
Ad-Hoc Externship	Marsha Levick	In Progress	7

**Fall 2022**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Professional Responsibility	Brent Landau	A	2
Federal Income Tax	Chris Sanchirico	A	3
Discrimination in Education	Michael Davis	A-	3
Juvenile Justice	Jessica Feierman, Marsha Levick	A	3
Ad-Hoc Externship	Marsha Levick	CR	3

**Spring 2022**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Criminal Law	Shaun Ossei-Owusu	A	4
Constitutional Law	Kermit Roosevelt	B+	4
Consumer Law	Tess Wilkinson-Ryan	B+	3
Reproductive Rights and Justice	Dorothy Roberts	B+	3
Legal Practice Skills	Jessica Simon	CR	2
Legal Practice Skills Cohort	Erich Makarov	CR	0

**Fall 2021**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Civil Procedure	Yanbai Andrea Wang	B+	4
Contracts	David Hoffman	B	4
Torts	Karen Tani	B	3
Legal Practice Skills	Jessica Simon	CR	4
Legal Practice Skills Cohort	Erich Makarov	CR	0

2/6/2016

Unofficial Transcripts

## Report Results

[Return](#)

### Student Unofficial Transcript

Indiana University Bloomington

Name : Dunn, Korinne A

Student ID : 0002830589

SSN : XXX-XX-1057

Birthdate : 11-15-XXXX

Address : 826 S Western Dr  
Bloomington, IN 47403-1877  
United States

Print Date : 02-06-2016

Request Nbr : 019132905

### - - - - - Beginning of Undergraduate Record - - - - -

#### Fall 2011 Bloomington

Program : University Div Ugrd Nondeg

Program : University Div Ugrd Nondeg

Course	Title	Hrs	Grd
ENG-W 131	ELEMENTARY COMPOSITION 1	3.00	A-
THTR-T 101	SCRIPT ANALYSIS FOR THEATRE	3.00	A
Semester:	IU GPA Hours: 6.00	GPA Points: 23.100	
	Hours Earned: 6.00	GPA: 3.850	
Cumulative:	IU GPA Hours: 6.00	GPA Points: 23.100	
	Hours Earned: 6.00	GPA: 3.850	

#### Spring 2012 Bloomington

Program : University Div Ugrd Nondeg

Program : University Div Ugrd Nondeg

Course	Title	Hrs	Grd
ENG-L 202	LITERARY INTERPRETATION	3.00	A-
Semester:	IU GPA Hours: 3.00	GPA Points: 11.100	
	Hours Earned: 3.00	GPA: 3.700	
Cumulative:	IU GPA Hours: 9.00	GPA Points: 34.200	
	Hours Earned: 9.00	GPA: 3.800	

#### Fall 2013 Bloomington

Program : Arts &amp; Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-E 200	SOCIAL & CULTURAL ANTHROPOLOGY	3.00	A
ANTH-L 200	LANGUAGE AND CULTURE	3.00	A
COLL-C 105	CRIT APPROACHES: NATL&MATH SCI	3.00	A
Course Topic(s): SISTER SPECIES			
GER-G 100	BEGINNING GERMAN I	4.00	A
THTR-T 100	INTRODUCTION TO THEATRE	3.00	A

#### Transfer Credit from Boston University

Applied Toward Arts &amp; Sciences Undergraduate Program Bloomington

ENG-W 131	ELEMENTARY COMPOSITION 1	4.00	T
HPER-E 148	T'AI CHI CH'UAN	1.00	T
HPER-UN 100	HPER UNDISTRIBUTED-100 LEVEL	1.00	T

2/6/2016

Unofficial Transcripts

MUS-UN	100	MUS UNDISTRIBUTED-100 LEVEL	0.50 T
THTR-T	120	ACTING I: FUNDMNTLS OF ACTING	3.00 T
THTR-T	125	INTRO TO THEATRICAL PRODUCTION	2.00 T
THTR-T	325	VOICE AND SPEECH	2.00 T
THTR-T	410	MOVEMENT FOR THE THEATRE I	2.00 T
THTR-T	460	DEVELOPMENT OF DRAMATIC ART 1	3.00 T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	3.00 T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	2.00 T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	1.00 T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	1.00 T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	3.00 T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	2.00 T

Transfer Hrs Passed: 30.50

**Test Credit Applied Toward University Div Pre-CollArts&Sc Program Bloomington**

Course	Title	Hrs Grd
ENG-W 131EX	SEM 1 ENG COMPOSITION BY EXAM	0.00 T
TEST-BL 99MATH01	PLCMT MATH LEVEL 01	0.00 T

Test Credit Hrs: 0.00

**IU Special Credit Applied Toward University Div Pre-CollArts&Sc Program Bloomington**

ENG-W 143	INTERDISCIP STUDY EXPOS WRTNG	2.00 S
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Other Credit Hrs: 2.00

Semester:	IU GPA Hours:	16.00	GPA Points:	64.000
	Hours Earned:	48.50	GPA:	4.000
Cumulative:	IU GPA Hours:	25.00	GPA Points:	98.200
	Hours Earned:	57.50	GPA:	3.928

**Spring 2014 Bloomington**

Program : Arts & Sciences Undergraduate

Course	Title	Hrs Grd
ANTH-B 200	BIOANTHROPOLOGY	3.00 A+
GER-G 150	BEGINNING GERMAN II	4.00 A
TEL-T 206	INTRO TO DESIGN & PRODUCTION	3.00 A+
THTR-T 319	ACTING III: ADV SCENE STUDY	3.00 A

**Transfer Credit from Ivy Tech Comm Coll Bloomington**

**Applied Toward Arts & Sciences Undergraduate Program Bloomington**

MATH-M 118	FINITE MATHEMATICS	3.00 T
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Transfer Hrs Passed: 3.00

Semester:	IU GPA Hours:	13.00	GPA Points:	52.000
	Hours Earned:	16.00	GPA:	4.000
Cumulative:	IU GPA Hours:	38.00	GPA Points:	150.200
	Hours Earned:	73.50	GPA:	3.953

**Summer 2014 Bloomington**

Program : Arts & Sciences Undergraduate

Course	Title	Hrs Grd
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2/6/2016

Unofficial Transcripts

COLL-P 155 PUBLIC ORAL COMMUNICATION 3.00 A+  
 Semester: IU GPA Hours: 3.00 GPA Points: 12.000  
 Hours Earned: 3.00 GPA: 4.000  
 Cumulative: IU GPA Hours: 41.00 GPA Points: 162.200  
 Hours Earned: 76.50 GPA: 3.956

**Fall 2014 Bloomington**

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-P 200	INTRODUCTION TO ARCHAEOLOGY	3.00	A
GER-G 200	INTERMEDIATE GERMAN I	3.00	A
LING-L 307	PHONOLOGY	3.00	A-
LING-L 315	INTRO TO SOCIOLINGUISTICS	3.00	A
THTR-T 419	ACTING IV: ACTING SHAKESPEARE	3.00	A
THTR-T 441	ACTING FOR THE CAMERA	3.00	A
Semester: IU GPA Hours:	18.00	GPA Points:	71.100
Hours Earned:	18.00	GPA:	3.950
Cumulative: IU GPA Hours:	59.00	GPA Points:	233.300
Hours Earned:	94.50	GPA:	3.954

**Spring 2015 Bloomington**

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-E 397	PEOPLES & CULTURES OF MID EAST	3.00	A
ANTH-L 400	SEM IN ETHNOGRAPHY OF COMM	3.00	A
Course Topic(s): LANGUAGE IN/OF MEDIA			
GER-G 250	INTERMEDIATE GERMAN II	3.00	A
LING-L 306	PHONETICS	3.00	A
THTR-T 445	VOICE AND DIALECTS	3.00	W
Semester: IU GPA Hours:	12.00	GPA Points:	48.000
Hours Earned:	12.00	GPA:	4.000
Cumulative: IU GPA Hours:	71.00	GPA Points:	281.300
Hours Earned:	106.50	GPA:	3.962

**Summer 2015 Bloomington**

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
MSCH-L 424	TELECOMM & THE CONSTITUTION	3.00	A
SPEA-V 220	LAW AND PUBLIC AFFAIRS	3.00	A
Semester: IU GPA Hours:	6.00	GPA Points:	24.000
Hours Earned:	6.00	GPA:	4.000
Cumulative: IU GPA Hours:	77.00	GPA Points:	305.300
Hours Earned:	112.50	GPA:	3.965

**Fall 2015 Bloomington**

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-E 437	POWER & VIOLENCE IN ETHN PERSP	3.00	A+
ANTH-P 330	HISTORICAL ARCHAEOLOGY	3.00	A
LING-L 203	INTRO TO LINGUISTIC ANALYSIS	3.00	A
SPEA-V 339	LEGAL HISTORY & PUBLIC POLICY	3.00	A
SPEA-V 435	NEGOTIATION & ALTERN DISP RES	3.00	A
Semester: IU GPA Hours:	15.00	GPA Points:	60.000

2/6/2016

Unofficial Transcripts

Hours Earned:	15.00	GPA:	4.000
Cumulative: IU GPA Hours:	92.00	GPA Points:	365.300
Hours Earned:	127.50	GPA:	3.971

**Student Undergraduate Program Summary**

GPA Hours:	92.00	Transfer/Test Hours Passed:	29.50
Hours Earned:	123.50	Points:	365.300
		GPA:	3.971

**Indiana University Undergraduate Summary**

IU GPA Hours:	92.00	Transfer/Test Hours Passed:	33.50
Hours Earned:	127.50	Points:	365.300
		GPA:	3.971

**Academic Objective as of Last Enrollment**

Arts & Sciences Undergraduate

Anthropology BA

Law and Public Policy MIN

Linguistics MIN

Theatre & Drama MIN

- - - - - **Non-Course Milestones** - - - - -

2015-05-13 Indiana STGEC - IU Bloomington

Milestone Status: Completed

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## Unofficial Transcript - Graduate Career

Name: Korinne Dunn  
Student ID: 5173609

Student Address: 3915 Southern Pkwy Apt 2  
Louisville, KY 40214-1676  
United States  
Print Date: 2020-11-12

## Degrees Awarded

Degree: Master of Arts in Teaching  
Confer Date: 2018-05-12  
Plan: Middle School Education, concentration in English

## Other Institutions Attended

Indiana University Bloomington  
814 East Third Street  
Bloomington, IN 47405  
United States  
Spalding University  
851 South 4Th Street  
Louisville, KY 40203  
United States  
Boston University  
121 Bay State Road  
Boston, MA 02215  
United States

## External Degrees

Indiana University Bloomington  
Bachelor of Arts 2016-05-07

Beginning of Graduate Record  
Summer 2016

Program: Grad Education Degree  
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 631	INTEG TCHG AND LRNG I	3.000	3.000	A	12.000
EDTP 632	INTEG TCHG AND LRNG II	3.000	3.000	A	12.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	6.000	6.000	6.000	24.000
		Term Transfer Totals		0.000	
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	6.000	6.000	6.000	24.000

## Fall 2016

Program: Grad Education Degree  
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 621	INTENSIVE FIELD EXPERNCE	1.500	1.500	P	0.000
Course Attributes: Field Experience/Practicum					
EDTP 633	INTEG TCHG AND LRNG III	3.000	3.000	A	12.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	4.500	4.500	3.000	12.000
		Term Transfer Totals		0.000	

## Spring 2017

Program: Grad Education Degree  
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 607	MDL SCHL LANG ARTS MTHDS	3.000	3.000	A+	12.000
Course Attributes: Field Experience/Practicum					
EDTP 627	PRACTICUM	3.000	3.000	A	12.000
Topic: PRACTICUM FOR ALTERNATIVE CERT					
MSPC 100	METRO-SPALDING UNIVERSITY	3.000	3.000	A+	12.000
Topic: EDR531 LIT FOR YOUNG ADULTS					
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	9.000	9.000	9.000	36.000
		Term Transfer Totals		0.000	
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	19.500	19.500	18.000	72.000

## Summer 2017

Program: Grad Education Degree  
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 503	DEV CROSS-CULT COMPETENC	3.000	3.000	A+	12.000
EDTP 580	DGTL CTZN: TECHN & TCHNG	3.000	3.000	A+	12.000
EDTP 620	RDG & WRTG ATC	3.000	3.000	A	12.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	9.000	9.000	9.000	36.000
		Term Transfer Totals		0.000	
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	28.500	28.500	27.000	108.000

## Fall 2017

Program: Grad Education Degree  
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 678	SUPPORTING TCHR INTERN I	3.000	3.000	A-	11.100
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	3.700 Term Totals	3.000	3.000	3.000	11.100
		Term Transfer Totals		0.000	
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.970 Cum Totals	31.500	31.500	30.000	119.100





Unofficial Transcript - Graduate Career

Name: Korinne Dunn  
Student ID: 5173609

Spring 2018						
Program:		Grad Education Degree				
Plan:		Middle School Education, concentration in English Major				
Course		Course Title	Attempted	Earned	Grade	Points
EDTP	679	SUPPORTING TCHR INTERN II	3.000	3.000	A	12.000
			Attempted	Earned	GPA Units	Points
Term GPA		4.000 Term Totals	3.000	3.000	3.000	12.000
		Term Transfer Totals		0.000		
			Attempted	Earned	GPA Units	Points
Cum GPA		3.972 Cum Totals	34.500	34.500	33.000	131.100

Graduate Career Totals

Cum GPA	3.972	Cum Totals	34.500	34.500	33.000	131.100
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End of Unofficial Transcript - Graduate Career

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Korinne Dunn

Dear Judge Walker:

I write enthusiastically to support Korinne Dunn's application for a clerkship with Your Honor.

I first met Korinne Dunn in Fall 2022 when she was a student in my Juvenile Justice Seminar at Penn Carey Law School. The class met weekly for two hours. Students were required to prepare both oral and written presentations on an issue of their choosing, as well as attend and participate in weekly discussions. Korinne was an avid participant, offering interesting insights and asking probing questions. Throughout the semester, Korinne consistently demonstrated her intellectual acuity, critical thinking skills, and strong research and writing ability.

More recently, I served as Korinne's faculty supervisor for her Spring externship with the Special Litigation Section of the U.S. Department of Justice, Civil Rights Division. In this capacity, I met bi-weekly with Korinne to discuss her work and reflections in this position, and also reviewed her bi-weekly written journal entries describing the various assignments she was working on as well as any questions or challenges she was facing.

I thoroughly enjoyed serving as Korinne's supervisor for her externship. I looked forward to reading her journal entries and always appreciated our follow-up conversations where we discussed in depth not only the work she was doing but her reactions to the work and her new colleagues. I always found Korinne to be an astute observer and chronicler of her experience at DOJ. She asked important questions about the direction, strategy or even value of some of her research assignments, and was extremely thoughtful in her assessment of the litigation – or potential litigation – she was exposed to.

I particularly appreciated her intellectual curiosity about the legal approach DOJ might be taking in a particular matter, or her candid concern that some of her assignments often took her to a dead end. What I observed over the course of our semester-long conversations was her growth as a law student – and perhaps more importantly her growth as a future lawyer. Korinne entered her externship excited for the opportunity but uncertain of what to expect, and still unsettled about her future career direction. When the externship came to a close, Korinne had a much clearer vision for her own future, motivated by the commitment, passion and dedication of her DOJ colleagues. Wisely, she came to understand that the path for civil rights attorneys is rarely even or straight; known and unknown challenges invariably create detours and obstacles, as well as new opportunities.

I see the direct evidence of her growth in her decision to pursue this judicial clerkship. We discussed repeatedly in our bi-weekly calls how she could connect her experience at DOJ to her next and most immediate post-graduation career goals. She is anxious to continue to develop her research and writing skills – already exceptional – and continue to explore new subject matter areas. Korinne is excited about this opportunity to pursue a clerkship as she continues to formulate her professional path.

Finally, Korinne is a delightful person to work and engage with. She is confident, driven, and always intellectually curious about the work she is undertaking. As one of the first in her family to achieve this level of education, she also demonstrates humility in the way she approaches her work and is always mindful of the extraordinary opportunities she has had, and will have, to do work that she cares deeply about. I am extremely supportive of Korinne and recommend her to you without qualification. If I may be of further assistance, please do not hesitate to reach out to me via email or phone.

Sincerely,

Marsha Levick  
Adjunct Faculty  
University of Pennsylvania Carey Law School

Chief Legal Officer  
Juvenile Law Center  
(215) 625-0551  
mlevick@jlc.org

Marsha Levick - mlevick@jlc.org - 215-625-0551

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Korinne Dunn

Dear Judge Walker:

It is my great pleasure to offer my recommendation to support Korinne Dunn and her interest in applying to serve as a judicial clerk. Ms. Dunn has the character, intellect, legal knowledge and skills, work ethic and dedication, and even temperament to serve with distinction and honor. She is a former student in my seminar course, Discrimination in Education, at the University of Pennsylvania Carey Law School. Prior to her enrollment in the course for the fall 2022 semester, Ms. Dunn introduced herself and asked if I would support her as faculty sponsor for her externship with the Education Law Center (ELC), a public interest non-profit firm focusing on educational rights and related litigation and advocacy. The externship program was highly structured and required that we meet hourly every other week in the semester to review and discuss her experiences and the detailed reflective journal entries she had written for each session. In addition to having Ms. Dunn in my class, working with her on the ELC externship gave me a good opportunity to assess her worthiness for advancing her legal career and serving as a judicial clerk.

Before attending law school, Ms. Dunn had demonstrated her intellectual ability and dedication to excellence, first by earning her bachelor's degree in Anthropology from Indiana University in 2016, with summa cum laude and Phi Beta Kappa honors. After graduating, she taught in public school in Louisville, Kentucky from 2016 to 2021, with a strong focus on English language arts and literacy. She created and implemented a curriculum for teaching literacy and writing to middle school students. In 2018 Ms. Dunn earned a Master of Arts in Teaching degree from the University of Louisville while teaching full time. With her qualifications and qualities Ms. Dunn was admitted to and entered the University of Pennsylvania Carey Law School in fall 2021. She has continued to expand her knowledge and intellectual capacity and abilities, most notably as to the study of law and legal practice. Her achievement of Dean's Scholar status underscores her work ethic and desire to succeed.

Ms. Dunn has exemplified a strong service orientation in volunteering for several projects and initiatives. During her public school tenure, in addition to her teaching responsibilities, she provided support for community literacy and English language improvement programs. For example, Ms. Dunn developed and co-facilitated the Adolescent Literacy Project in Louisville. She also volunteered to assist with English language support for the Bhutanese American Hindu Society, and she was a volunteer tutor for Kentucky Refugee Ministries. She has continued in her service orientation while at law school, working as a member of the Criminal Record Expungement Project.

In my course, Ms. Dunn also demonstrated she has the required intellectual capacity and practical and diplomatic skills necessary to become and exceed expectations as a judicial clerk. I teach a seminar course with enrollment limited to fourteen students to encourage and facilitate participation in class discussions. Ms. Dunn came to class prepared and contributed regularly with analysis, comments, and good questions. Her educational background and public school experiences were helpful to the class because she offered important knowledge, perspectives, and understanding of real-world teaching and learning. Ms. Dunn also excelled in the presentation of an in-class oral argument required for course completion. Students are randomly paired to give opposing counsel arguments, with questions directed from the class "court." As part of the requirement, students must prepare for oral argument based on assigned cases for the week and must write and "serve" written memoranda prior to the argument. Ms. Dunn showed her ability in both components of advocacy skills, writing her legal arguments and presenting them orally before an interrogating body, at the highest level of class performance.

Ms. Dunn's legal writing skills were displayed in her final paper for the course in which she analyzed the complicated and divisive issues surrounding racial segregation, remedy, and resegregation in Jefferson County public schools in Louisville Kentucky. She explored the impact of the Supreme Court's decision in Parents Involved and its lack of deference to the school district's educational expertise and judgment, contributing to resegregation. She deftly reviewed the segregation history of the district and the evolution of litigation which resulted in the district's voluntary desegregation plan as a foundation for a comprehensive discussion of the use of race in student assignments. Applying data, policy arguments, and a detailed Equal Protection analysis, she articulated how the use of race in student assignments by Jefferson County did not violate the Equal Protection Clause. Ms. Dunn's writing was clear, succinct, and persuasive. She presented her thesis at the beginning, set up the issues well, and took them to conclusion in logical order.

Ms. Dunn achieved great success in her externship in several respects. I believe she fulfilled the objectives of the program by deepening her substantive knowledge, sharpening essential lawyering skills, and appreciating professional values. Ms. Dunn's placement supervisor evaluated her performance as excellent. Her lawyering and legal writing skills were highly rated, and she was dependable and reliable. She was punctual, efficient with good organizational skills, and met expected deadlines. In our meetings to review her reflexive journal entries, we discussed many matters and issues, including substantive and procedural issues, legal ethics, lawyering and legal practice, case strategy, and office politics. Ms. Dunn demonstrated great instincts by raising questions about interactions with others in the office and about attorney decisions and reasons for certain actions. Ms. Dunn is forthright, diligent and diplomatic, and she is eager to learn and improve. I enjoyed mentoring her because she is a

Michael Davis - michaeladavis888@gmail.com

pleasure to work with and she works hard.

I wholeheartedly recommend Ms. Dunn to serve as judicial clerk. Thank you.

Sincerely,

Michael A. Davis, Esq.  
michaeladavis888@gmail.com  
610-505-6387

Michael Davis - michaeladavis888@gmail.com

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Korinne Dunn

Dear Judge Walker:

I am writing to recommend Korinne Dunn for a clerkship. Korinne is a wonderful student and a remarkable citizen of every community she belongs to, and I am thrilled to recommend her.

I taught Korinne in a first-year elective course, Consumer Law, in the spring of 2022. She was a thoughtful, prepared participant, even in a class of 90 students.

In our Consumer Law class, I had students complete an unusual activity, which was to read a work of sociology on for-profit post-secondary schools and to discuss in class and to write me a short memo on the legal implications of what they were reading about. Korinne made an astute connection between the narrow doctrine of misrepresentation of opinion in the common law and the fraud claims plaguing some for-profit schools. She drew on the opinion from *Vokes vs. Arthur Murray* to make this comparison:

In *Arthur Murray*, the plaintiff was seen by the court as a victim of a scheme designed to pressure her into spending more money to achieve more stature-- the court's decision turned on the fact that the person pressuring her expenditures, the teacher, possessed and weaponized his superior knowledge of her lack of skill. In for-profit school recruiting, as [the author of *Lower Ed*] portrays it, the "enrollment officers" were evidently aware of the relatively low worth of the degrees they were selling to students and of the relatively high likelihood that the prospective students would not complete the degree requirements to make their investments worthwhile.

She concluded with the core of the dilemma, noting that any intervention into the contracts between schools and students risks doing more harm than good with "regulations...hindering their ability to participate in the education and labor market." Korinne is a great writer, and that skill shone through on her exam as well.

Korinne is a first-generation professional student who came to Penn Law after five years teaching middle school English. She describes her experience teaching in public schools in Kentucky as an abrupt realization of her own limitations as a new teacher—especially as an outsider, racially and geographically, to her students' community—and a systematic, dogged insistence on improving that yielded real progress over time. Her transcript from Penn suggests that this ability to dig in and learn is part of a pattern. Her first semester was clearly rocky, her second semester an improvement, and by the time she completed the notoriously challenging Tax course her 2L fall, she was a straight-A student.

Finally, Korinne is a committed member of her community, wherever it is. When she was in college, she taught employment workshops for incarcerated and formerly-incarcerated people. When she was teaching middle school in Louisville, she sponsored the LGBTQ+ Club and the Racial Equity committee. At Penn Law, she works with the Criminal Record Expungement Project and edits the *Regulatory Review*. She is incredibly well-liked by her peers, because she is a real contributor who is also a lovely person to be around.

If I can offer any further reflections on this wonderful student, please do not hesitate to reach out by phone (cell: 215-668-4272) or email.

Sincerely,

Tess Wilkinson-Ryan  
Professor of Law  
Tel.: (215) 746-3457  
E-mail: [twilkins@law.upenn.edu](mailto:twilkins@law.upenn.edu)

Tess Wilkinson-Ryan - [twilkins@law.upenn.edu](mailto:twilkins@law.upenn.edu) - 215-746-3457

**Korinne A. Dunn**

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Philadelphia, PA 19107  
korinned@pennlaw.upenn.edu  
(812) 340-3768

WRITING SAMPLE

The attached writing sample is a memorandum that I drafted as an assignment during a semester externship with the United States Department of Justice, Civil Rights Division, Special Litigation Section. I was asked to research whether a city's police department may violate the Eighth Amendment Cruel and Unusual Punishments Clause when its officers wake individuals experiencing homelessness sleeping in public areas and ask them to move under threat of arrest. I performed all research and this work is entirely my own.

All identifying facts and references to specific departments and cities have been redacted for confidentiality. I am submitting the attached writing sample with the permission of the Special Litigation Section.

Disclaimer: The views and analysis in this memorandum are my own and do not necessarily reflect the views of any other person or organization.

## MEMORANDUM

**DATE** April 28, 2023  
**TO** [Redacted]  
**FROM** Korinne Dunn  
**SUBJ** Memorandum on application of the Eighth Amendment to police threats of arrest toward people experiencing homelessness.

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## QUESTION PRESENTED

Does a police department violate the Eighth Amendment when it invokes a city's overturned anti-camping ordinance to order individuals experiencing homelessness to wake up and move under threat of arrest?

## BRIEF ANSWER

It is unlikely a police department violates the Eighth Amendment Cruel and Unusual Punishments Clause when its officers wake individuals experiencing homelessness and order them to move under threat of arrest alone. The Ninth Circuit has held that for the Cruel and Unusual Punishments clause to apply, individuals must be subjected to a criminal penalty, such as a citation, fine, arrest, or prosecution. No such penalty is imposed when officers merely threaten individuals with arrest.

However, if the order to move under threat of arrest initiates a criminal process that leads to criminal penalties in the future, the practice may implicate the Eighth Amendment Cruel and Unusual Punishments Clause. The strength of such an argument may depend on the extent to which the police practice can be said to contribute to subsequent criminalization.

## DISCUSSION

### I. IT IS UNLIKELY A POLICE DEPARTMENT VIOLATES THE EIGHTH AMENDMENT CRUEL AND UNUSUAL PUNISHMENTS CLAUSE WHERE NO CRIMINAL PENALTY IS IMPOSED.

A police department is unlikely to violate the Eighth Amendment Cruel and Unusual Punishments Clause by waking individuals experiencing homelessness and ordering them to move under threat of arrest, where no such arrest or other criminal penalty is imposed.

The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The Cruel and Unusual Punishments Clause circumscribes the criminal process by 1) limiting the types of punishment the government may impose, 2) banning punishment “grossly disproportionate” to the severity of the crime, and 3) placing substantive limits on what the government may criminalize. *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). Here, only the third limitation is relevant. The Ninth Circuit has held that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Martin v. Boise*, 920 F.3d 584, 617 (9th Cir. 2019), *cert. denied sub nom Boise v. Martin*, 140 S. Ct. 674 (2019).

Courts in the Ninth Circuit have held there must be an initiation of the criminal process for the *Martin* rule to apply. See e.g., *Housing is a Human Right Orange County. v. County. of Orange*, No. SACV19388PAJDEX, 2019 WL 8012374 at \*5 (C.D. Cal. Oct. 28, 2019) (*Martin* “...require[es] the initiation of the criminal process to state a claim for damages for an Eighth Amendment violation”). Some courts in the Ninth Circuit have held the criminal process is initiated only when the challenged action includes direct imposition of criminal penalties, such as criminal citation, arrest, or prosecution. See e.g., *Shipp v. Schaaf*, 379 F. Supp. 3d 1033, 1037



(N.D. Cal. 2019) (declining to extend *Martin* where closure of a homeless camp did not result in criminal sanctions); *see also Butcher v. City of Marysville*, No. 218CV02765JAMCKD, 2019 WL 918203, at \*1-2, 7 (E.D. Cal. Feb. 25, 2019) (refusing to apply the Eighth Amendment “beyond the criminal process” where eviction and destruction of property by the city did not also include imposition of criminal sanctions). However, other courts have held the Eighth Amendment is implicated when criminal penalties result indirectly from the challenged state action, including through imposition of civil penalties that lead to criminal penalties down the line. *See e.g., Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) (holding the city could not evade Eighth Amendment analysis by taking a “circuitous” path to criminalization by imposing civil citations which led to subsequent criminal penalties); *see also Austin v. United States*, 509 U.S. 602, 609-10 (1993) (holding the Eighth Amendment applies to civil and criminal punishment).

The Ninth Circuit has explicitly rejected the theory that the mere threat of a criminal penalty can constitute an Eighth Amendment violation. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (“[I]t trivializes the eighth amendment to believe a threat constitutes a constitutional wrong...”); *see also Young v. City of Los Angeles*, No. CV2000709JFWRAO, 2020 WL 616363 (C.D. Cal. Feb. 10, 2020) (finding no Eighth Amendment claim where plaintiff was not criminally prosecuted but where police merely issued false tickets and reports); *see also Walton v. Terry*, 38 F. App'x 363 (9th Cir. 2002) (“...[V]erbal threats alone do not constitute cruel and unusual punishment”); *see also Sullivan v. City of Berkeley*, No. C 17-06051 WHA, 2018 WL 1471889 (N.D. Cal. Mar. 26, 2018) (declining to extend *Martin* to “the mere threat of arrest as opposed to an arrest or citation”).

However, one court in the Ninth Circuit recently included threats of punishment in its Eighth Amendment analysis, where those threats were tied to the imposition of criminal penalties.

*See Coalition on Homelessness v. City & Cnty. of San Francisco*, No. 22-CV-05502-DMR, 2022 WL 17905114 at 27 (N.D. Cal. Dec. 23, 2022) (granting a preliminary injunction prohibiting officers from enforcing or threatening to enforce certain laws prohibiting sitting, lying, and sleeping on public property).

Under Ninth Circuit precedent, a police department does not likely initiate the criminal process when its officers merely threaten individuals with arrest, rather than imposing criminal penalties such as citations, arrests, or prosecution. However, if further investigation into the police department's practice reveals threats of arrest lead to criminal penalties down the line, the Eighth Amendment Cruel and Unusual Punishments Clause may apply.

**A. A Police Department Has Not Likely Initiated the Criminal Process Where Officers Have Not Imposed Criminal Penalties.**

A police department has not likely initiated the criminal process when its officers threaten individuals experiencing homelessness with arrest but do not either actually make an arrest or impose other criminal penalties, whether directly or indirectly. Courts in the Ninth Circuit have held criminal penalties must be imposed in order to establish an Eighth Amendment claim under *Martin*. *See e.g., Catchings v. City of Los Angeles*, 2020 WL 5875100 (C.D. Cal. 2020) (finding no Eighth Amendment claim where an individual experiencing homelessness was ordered to leave a public area in which she had set up a tent, but where she did not allege to face any criminal penalties); *see also Le Van Hung v. Schaaf*, No. 19-CV-01436-CRB, 2019 WL 1779584 (N.D. Cal. Apr. 23, 2019) (finding no Eighth Amendment violation where the city cleared and cleaned a park, but where police did not arrest plaintiffs); *see also Mahoney v. City of Sacramento*, No. 220CV00258KJMCKD, 2020 WL 616302 at \*3 (E.D. Cal. Feb. 10, 2020) (finding plaintiffs did

not likely have an Eighth Amendment claim because removal of a portable toilet from an encampment did not constitute a criminal penalty); *see also Young v. County of Los Angeles*, No. CV 20-00709-JFW(RAO), 2020 WL 616363, at \*5 (C.D. Cal. Feb. 10, 2020) (holding the “Eighth Amendment only bars the City from criminally prosecuting Plaintiff for sleeping on public streets when he has no other place to go”); *but cf. Aitken v. City of Aberdeen*, 393 F. Supp. 3d 1075, 1082 (W.D. Wash. 2019) (requiring additional argument and briefing to determine whether the rationale in *Martin* concerning criminal sanctions extends to the civil penalties imposed by an anti-camping ordinance).

A mere threat of a criminal penalty has been found insufficient to make an Eighth Amendment claim. *See Housing is a Human Right Orange County*, No. SACV19388PAJDEX, 2019 WL 8012374; *see also Gaut*, 810 F.2d at 925. In *Housing is a Human Right Orange County*, the Central District of California found that there was no valid Eighth Amendment claim where officers merely threatened individuals with arrest but did not actually arrest them or impose a criminal penalty. *Housing is a Human Right Orange County*, No. SACV19388PAJDEX, 2019 WL 8012374, at \*5. Plaintiffs, who were individuals experiencing homelessness, alleged officers violated the Eighth Amendment by rousing individuals experiencing homelessness and threatening them with arrest. *Id.* at \*4-5. Plaintiffs further alleged defendants had “a custom, policy, and/or practice of encouraging its officers, employees and agents to threaten enforcement of City ordinances and citations and arrest of homeless persons for the unavoidable behavior of sleeping or having property in public based on their unhoused status.” *Id.* at \*5. The court determined threats of arrest were insufficient to state an Eighth Amendment claim. *Id.* It reasoned that *Martin* “...require[es] the initiation of the criminal process to state a claim for damages for an Eighth Amendment violation,” and it determined the criminal process was not initiated by the officers’

mere threats of citation and arrest. *Id.* at 5. The court also cited to the holding in *Gaut* that it “trivializes the Eighth Amendment to believe a threat constitutes a constitutional wrong.” *Id.* at 5 (citing *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987)).

Similarly, in *Catchings v. City of Los Angeles*, the court held there was no Eighth Amendment claim where the plaintiff did not allege she was subjected to criminal penalties. *Catchings v. City of Los Angeles*, 2020 WL 5875100 (C.D. Cal. 2020). The plaintiff, a person experiencing homelessness, brought an Eighth Amendment claim against the city after she was ordered by police on two occasions to leave a public area where she had set up a tent. *Id.* at 1. On one occasion, police destroyed her property. *Id.* On another occasion, police cited her for camping outside permitted hours, but she was later acquitted due to lack of notice. *Id.* The court determined the Eighth Amendment rule in *Martin* did not apply because the plaintiff in this case did not allege to have faced any criminal penalties in connection with the incidents. *Id.* at \*7.

Under Ninth Circuit precedent, it seems unlikely a police department’s officers would be held to have directly initiated the criminal process by threatening individuals experiencing homelessness with arrest without actually imposing criminal penalties. Like in *Housing is a Human Right*, if officers appear to have a “custom, policy, and/or practice” of invoking but not acting on a city statute by threatening individuals with arrest, police do not likely initiate the criminal process. Further, like in *Catchings*, police do not likely initiate the criminal process when they ask an individual experiencing homelessness to move from their public sleeping location but where a criminal penalty is not alleged to have been imposed. Under Ninth Circuit precedent, it seems unlikely threats alone, without imposition of criminal penalties, arise to a violation of the Eighth Amendment.